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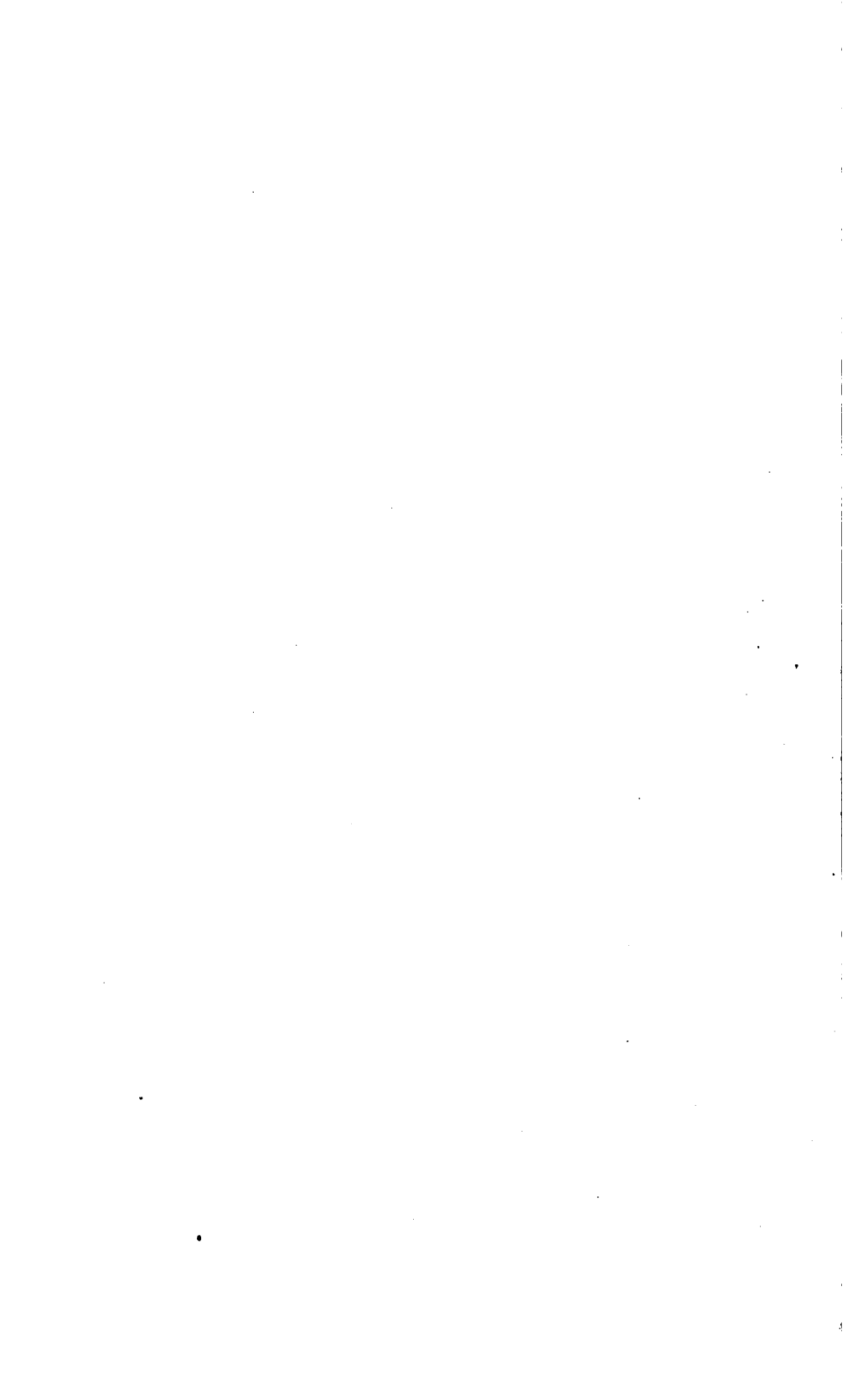
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Court of Queen's Bench.

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THE RIGHT HON. THE EARL OF ERNE,

Plaintiff :

JOHN GREY VESEY PORTER, ESQ.,

Defendant.

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REPORT OF THE TRIAL

OF AN ACTION FOR LIBEL,

HAD, IN THIS CAUSE,

BEFORE THE LORD CHIEF JUSTICE AND A SPECIAL  
JURY.

ON THE 12th AND 14th FEBRUARY, 1859.

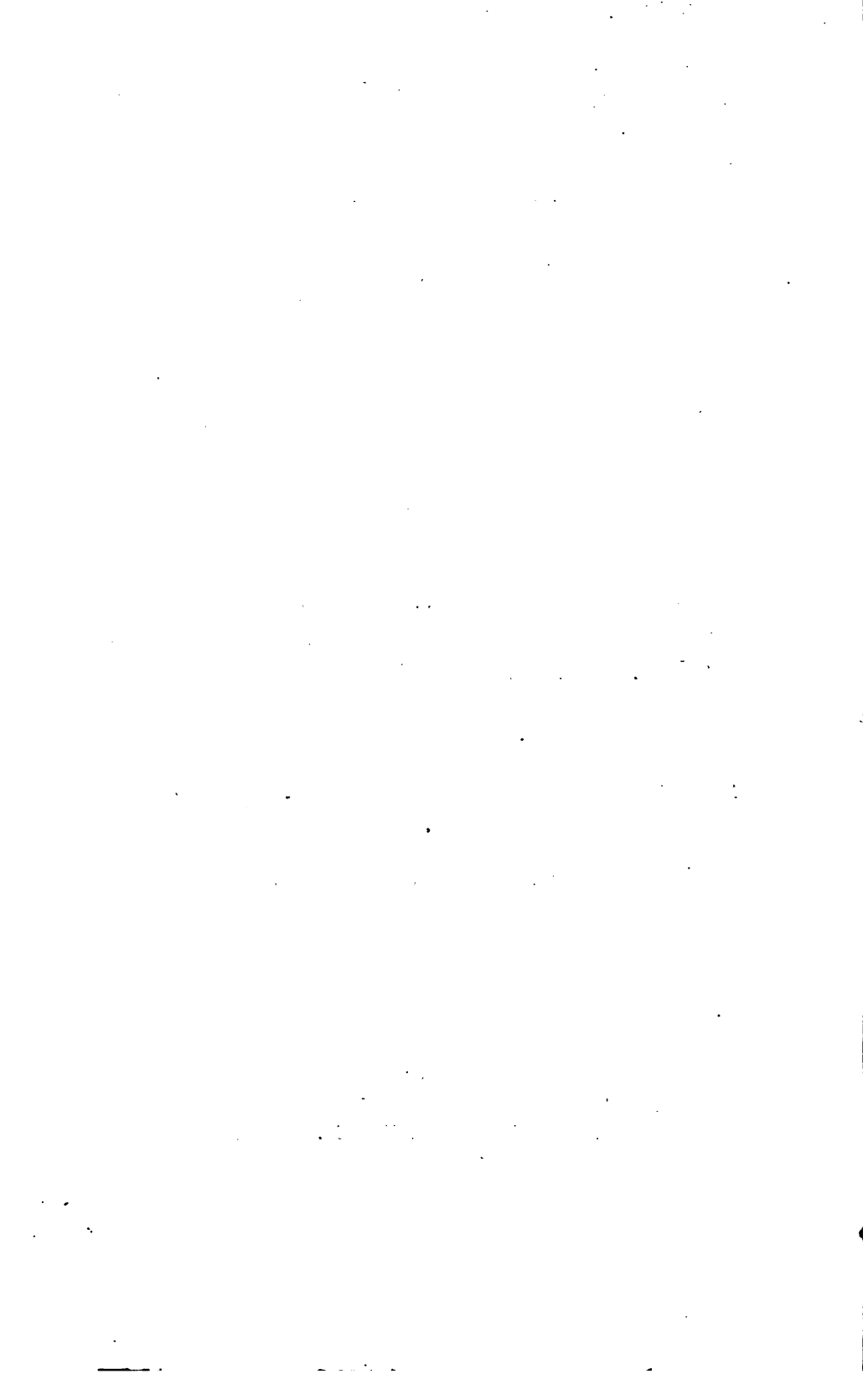
BY AN EMINENT SHORT-HAND WRITER.

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DUBLIN :

PRINTED BY GOODWIN, SON, AND NETHERCOTT,  
79, MARLBOROUGH-STREET.

1859.



## INTRODUCTION.

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As *few persons* in the County of Fermanagh were disposed to invest even the small sum of *Six-pence* in purchase of the *malignant production* which gave rise to the action at law in this cause, the literary composition complained of was, *with extreme generosity*, transmitted (*free of all expense*) to private individuals, club-houses, news-rooms, and other public places, in *Ireland and elsewhere*, with a view to procure for same the publicity which the author *conceived* it required and deserved.

Desirous to *disabuse* the public mind, and to *remove* and *counteract* any erroneous or unfavourable impressions, which (possibly) the *insinuations* and *mis-statements* contained in *the work* were calculated to create, an *accurate* and *correct* report of the trial has been obtained, and will be found in the annexed pages.

DUBLIN, *March*, 1859.





# COPY OF THE RECORD.

Court of Queen's Bench,

*Wednesday, the 19th day of January, in the year of  
Our Lord, 1859.*

COUNTY OF DUBLIN,

*To wit.*

RIGHT HON. JOHN  
CRICHTON, EARL  
OF ERNE,

*Plaintiff :*

JOHN GREY VESEY  
PORTER,

*Defendant.*

WHEREAS the Right Hon. John Crichton, Earl of Erne, the Plaintiff, on Monday the 13th day of December, 1858, sued John Grey Vesey Porter, the Defendant, and complained that the Plaintiff, being an Irish Representative Peer of the United Kingdom and Lord Lieutenant of the County of Fermanagh, and one of the Directors of the Dundalk and Enniskillen Railway Company, and the Chairman of the Board of Directors thereof, and esteemed and reputed in his said rank and station as an upright man of unblemished fame and reputation, and as a faithful and honest Director and Chairman of said Company ; and, as such, enjoying the esteem and good opinion of his neighbours and of the public, the Defendant well knowing the premises, but wickedly and maliciously intending to injure the Plaintiff in his good name, fame, and credit, and to bring him into public scandal, infamy and disgrace, on or about the 9th day of August, 1858, falsely, wickedly, and maliciously printed and published a certain book or pamphlet, in one part of which were printed and published of the Plaintiff, and of the Plaintiff as such Director and Chairman of the said Company as aforesaid, the false, scandalous, malicious and defamatory words following, that is to

say—" Still men often take different views of affairs, " and are liable to mistakes, let us therefore, in " charity, suppose Lord Erne and our Directors," (meaning the Plaintiff, as such Director and Chairman, and the persons who were the other Directors of said Company) " had our interests at heart. But " why have improper means, improper patronage, " improper political influence, been used to promote " views which have now failed, and with the most " grievous injury to our property ?" (the Defendant meaning thereby that the Plaintiff, the Chairman, and others, who were Directors of said Dundalk and Enniskillen Railway Company, however charitably it might be supposed that the Plaintiff, so being Director and Chairman, and said other persons so being Directors of said Company, had the interests of the shareholders of the said Company at heart, yet that said Plaintiff, the Chairman, and said Directors of said Company had used improper means, improper patronage, and improper political influence to promote views which had failed, and had thereby caused grievous injury to the property of the shareholders.)

And that in another part of said pamphlet the said Defendant falsely and maliciously printed and published of the Plaintiff, and of the Plaintiff as such Director and Chairman of the said Company, as aforesaid, the false, scandalous and defamatory words following, that is to say—" Why has truth " been disregarded in our Director's statements ? " Why did Lord Erne" (meaning the Plaintiff) " swear before Parliament, in 1855, that our " Directors" (meaning the Directors of said Company) " had then money enough to finish the line to Ennis- " killen, and £60,000 over and above towards " branches ? I" (meaning the Defendant) " cannot " imagine why Lord Erne hit upon this moderate

“ sum of £60,000; when he once left the terra firma  
 “ of plain truth he might just as well have said  
 “ £100,000 or £200,000. A Company” (meaning  
 the said Dundalk and Enniskillen Railway Company)  
 “ in debt, with its shares at a discount, and that has  
 “ twice since been obliged to go before Parliament to  
 “ raise money, might, with equal truth, have laid  
 “ claim to any sum, to any castle in the air;” (the  
 Defendant meaning thereby that the Plaintiff, so being  
 Chairman of the said Company, had disregarded  
 truth, and that having abandoned the firm basis of  
 truth, as a foundation for his statements the Plaintiff  
 had indulged himself in false and visionary assertions  
 and airy fictions, and had falsely sworn before Parlia-  
 ment, in the year 1855, that the Directors of the  
 said Company had then money enough to finish the  
 line to Enniskillen, and £60,000 over and above  
 towards Branches.)

And that in another part of said Pamphlet the  
 Defendant falsely and maliciously printed and pub-  
 lished of the Plaintiff, and of the Plaintiff as such  
 Director and Chairman of said Company, as afore-  
 said, the false, scandalous, and malicious words  
 following, that is to say—“ Observe what a serious  
 “ view the law takes of statements of this kind,”  
 (meaning the aforesaid statements by the Defendant,  
 attributed to the Plaintiff.) “ That disagreeable Act  
 “ of Parliament, ‘ For the Punishment of Fraudulent  
 “ ‘ Trustees,’ 20 & 21 Victoria, chap. 54, says, sec. 8,  
 “ ‘ If any Director of any public company shall make,  
 “ ‘ circulate, or publish, or concur in making, circu-  
 “ ‘ lating, or publishing any written statement’ or  
 “ ‘ account, which he shall know to be false in any  
 “ ‘ material particular, with intent to deceive or  
 “ ‘ defraud any member, shareholder, or creditor of  
 “ ‘ such P. C.,’ ” (meaning such Public Company)

“ ‘ or with intent to induce any person to become a  
 “ ‘ shareholder or partner therein, or to intrust or  
 “ ‘ advance any money or property to such P. C.,”  
 (again meaning such Public Company) “ ‘ or to enter  
 “ ‘ into any security for the benefit thereof, he shall  
 “ ‘ be guilty of a misdemeanor.’ ”

“ The spirit of this Act is, that Directors of Public  
 “ Companies are trustees of other persons’ properties,  
 “ and, besides the moral offence, are liable to legal  
 “ punishment for any false statement made by them  
 “ in their management ; though, in order to include  
 “ only matters likely to be capable of positive proof,  
 “ *spoken* false statements are purposely omitted, and,  
 “ therefore, so far, go scot free ; ” (the Defendant  
 meaning thereby, and imputing to the Plaintiff, that  
 the Plaintiff had been morally guilty of uttering false  
 statements, though not punishable under said Act of  
 Parliament, and that the Plaintiff had escaped the  
 punishment of the misdemeanor, punishable under  
 the said Act of Parliament for the punishment of  
 fraudulent Trustees, by reason of his false statements  
 having been spoken only, and not written ; and that if  
 the said statements, by said Defendant imputed to  
 the Plaintiff, had been written by the Plaintiff, the  
 Plaintiff would have been guilty of a misdemeanor,  
 punishable under said Act of Parliament.)

And that in another part of said Pamphlet, next  
 following the last mentioned words, the Defendant  
 falsely and maliciously printed and published, of the  
 Plaintiff, and of the Plaintiff as such Director and  
 Chairman of the said Company as aforesaid, the  
 false, scandalous, malicious and defamatory words  
 following, that is to say—“ I,” (meaning the Defen-  
 dant) “ quite concur in the general opinion that Lord  
 “ Erne,” (meaning the Plaintiff) “ in these and in  
 “ many similar statements, is only the dupe, in

" matters he does not understand ; but I am astonished  
 " that in justice to himself, as well as to our interests,  
 " he does not either enquire carefully into their truth  
 " beforehand, or else give the authority upon which  
 " he makes them, for they come with great weight on  
 " public meetings from a man," (meaning the Plain-  
 " tiff) " who is often Chairman of Church Education  
 " and Religious Societies, that, no doubt, have no  
 " special license to dispense with truth in Railway  
 " matters of hundreds of thousands of pounds, which  
 " is so vigorously and so justly preached in small  
 " matters of a few shillings, at church, at petty  
 " sessions, and between poor struggling men, tempted  
 " by hunger, pressed by distress, &c., &c.," (meaning  
 thereby that the Plaintiff, in making said false state-  
 ments, so imputed to him by the Defendant, and many  
 similar false statements, had been a dupe in matters  
 which the Plaintiff did not understand ; and that the  
 Plaintiff had done his own reputation, and the inter-  
 ests of the shareholders of the said Company, the  
 injustice of uttering said imputed false statements,  
 without having either enquired carefully into the truth  
 of them before he so uttered them, and without having  
 given the authority on which he made them. And fur-  
 ther meaning, and by insinuation imputing to the  
 Plaintiff that the Plaintiff had used a certain reputa-  
 tion acquired by him as Chairman of Church Education  
 and religious societies, in order to impress said imputed  
 false statements with greater weight upon the public  
 meetings to which he uttered said imputed false state-  
 ments. And further meaning that the Plaintiff had  
 vigorously and justly preached the necessity of adher-  
 ing to truth in small matters of a few shillings in  
 church and petty sessions, and between poor struggling  
 men, tempted to falsehood by hunger, and pressed to  
 it by distress and other compulsion ; but that in rail-

way matters, of hundreds of thousands of pounds, the Plaintiff had assumed to himself the license of dispensing with truth. And further meaning, by said last-mentioned paragraph of said Pamphlet, to insinuate that the Plaintiff had been guilty of the hypocrisy of preaching a regard to truth to other people, in small matters, while the Plaintiff himself exercised the license of dispensing with truth when large pecuniary interests were concerned, and when inclination prompted him so to do.)

And that, in another paragraph of said Pamphlet the Defendant falsely and maliciously printed and published of the Plaintiff, and of the Plaintiff as such Director and Chairman of the said Company, as aforesaid, the false, scandalous, malicious, and defamatory words following, that is to say—"There is "also this further reason for regretting Lord Erne's," (meaning the Plaintiff's) "conduct as to these branches. "The shareholders have not forced them on the Directors but the Directors on the shareholders," (meaning the Directors and shareholders of said Company.) "The "Directors even suspended the usual printed list in "our company of all shareholders, showing how many "shares each man held, on purpose to prevent the combination of their majority against any branches made "with preference shares; yet common prudence should "have made Lord Erne, at the head of the Company," (meaning the Plaintiff, in the position of Chairman of the said Company) "but not able to attend to its "detailed management, require that every shareholder's "opinion should have been fairly taken before a branch "act was sought, about which such different opinions "existed; Lord Erne," (meaning the Plaintiff,) "with "their own opinions to refer the majority to, would "then be free from blame. But in place of this "conduct, he," (meaning the Plaintiff) "assisted the

“solicitors” (meaning the solicitors of said Company) “in every way in quashing and overwhelming the “shareholder’s wishes,” (meaning thereby that the Plaintiff, in breach of his duty as such Director and Chairman of said Dundalk and Enniskillen Railway Company, assisted the solicitors of said Company in quashing and overwhelming the wishes of the shareholders of said Company.

And that, in another part of said Pamphlet, the Defendant falsely and maliciously printed and published of the Plaintiff, and of the Plaintiff as such Director and Chairman, as aforesaid, the false, scandalous, malicious and defamatory words following, that is to say—“The great loss to Fermanagh” (meaning the County Fermanagh) “from Lord Erne’s” (meaning the Plaintiff’s) “Railway mistakes, requires little “notice, because the loss of several years delay, the “annoyance of cars and coaches for several years longer than necessary, is plain to every man, and “because, in my opinion, in the management of a “Railway, as of every public company, the interests “of its shareholders are its first and sacred claim, “while local interests only deserve second attention. “This principle may seem hard, yet it is the only “sound principle that will lead capitalists quite unacquainted with the places themselves, and looking “only to their own interests, to risk money in public “companies that could not exist without their confidence and assistance. In our case, however, the “interests of the D. K. and E. R. C.” (meaning the said Dundalk and Enniskillen Railway Company) “and of the Co. F.” (meaning the said County Fermanagh) “are, and have been from the beginning “identical. Is it not therefore a sad, perhaps an irparable loss to this County,” (meaning the said County Fermanagh,) “that besides these long delays,



“ which, once over, might be forgotten, its main Rail-  
 “ way will not be, though last, the best in Ireland, with  
 “ the advantage of the experience acquired on earlier  
 “ lines ; but so closely run are the Company’s” (mean-  
 ing the said Dundalk and Enniskillen Railway Com-  
 pany’s) “ means, by their Directors’ law-suits,  
 “ disfigured by every exploded penny-wise-pound-  
 “ foolish makeshift, though certainly our” (meaning  
 the said Railway Company’s) “ edifices at Lord Erne’s”  
 (meaning the Plaintiff’s) “ village of Lisnakea, do  
 “ not show any want of money.” (Thereby meaning to  
 insinuate and impute to the Plaintiff, that the  
 Plaintiff had connived as such Director and Chairman  
 at the said alleged misconduct of the Directors of said  
 Company, in consideration of the building of certain  
 edifices at the expense of the said company, of a char-  
 acter and costliness incompatible with the embar-  
 rassed affairs of said Company, at the Plaintiff’s village  
 of Lisnaskea).

And that in another part of said Pamphlet the Defen-  
 dant falsely and maliciously printed and published the  
 following scandalous, false, malicious, and defamatory  
 words of the Plaintiff, and of the Plaintiff as such  
 Director and Chairman of said Company, that is to  
 say, “ It seems to me” (meaning the Defendant) “ to  
 “ be a common trick of Directors, and a common error  
 “ of shareholders, to make the solicitor the scape-goat  
 “ for all the Company’s misdeeds. But if Directors  
 “ are independent, if one man” (meaning the Plaintiff)  
 “ does not want an extravagant station in his” (mean-  
 ing the Plaintiff’s) “ village, and another well paid places  
 “ for needy relatives, and therefore bend to the  
 “ solicitor’s influence at the Board, he” (meaning the  
 solicitor) “ can do no harm, and the Directors, who can  
 “ dismiss him when they think fit, are therefore respon-

“sible for him while they keep him.” (Meaning thereby to insinuate and impute to the Plaintiff, that the Plaintiff wanted and had desired to have an extravagant station built with the capital of the said Railway Company, at the Plaintiff’s village, and that for the purpose of obtaining same and of accomplishing said desire, the Plaintiff had corruptly and in breach of his duty as a Director and chairman of said Company, yielded and bent to the influence of the solicitor of the said Company, at the Board of Directors of the said Company.

To the great scandal and disgrace of the Plaintiff, and to his discredit, injury and disparagement as such Director and Chairman of said Company, and to his damage of £2,000.

And the said Plaintiff further complained, that the Defendant falsely and maliciously printed and published a certain book or Pamphlet, in one part of which Pamphlet were printed and published of the Plaintiff, and of the Plaintiff as such Director and Chairman of the said Company as aforesaid, the false, scandalous, malicious, and defamatory words following, that is to say, “why has truth been disregarded in our Directors’ statements?” (meaning the statements made by the Directors of the Dundalk and Enniskillen Railway Company)—“why did Lord Erne” (meaning the Plaintiff) “swear before Parliament, in 1855, that our Directors” (meaning the Directors of said Company,) “had then money enough to finish the line to Enniskillen, and £60,000 over and above towards branches? I” (meaning the Defendant) “cannot imagine why Lord Erne hit upon this moderate sum of £60,000; when he once left the terra firma of plain truth, he might just as well have said, £100,000 or £200,000. A Company” (meaning the said Dundalk and Enniskillen Railway Company,) “in debt

“ with its shares at a discount, and that has twice since  
 “ been obliged to go before Parliament to raise money,  
 “ might with equal truth have laid claim to any sum,  
 “ to any castle in the air ;” (the Defendant thereby  
 meaning that the Plaintiff had, in the year 1855, when  
 examined as a witness before a Committee of one of the  
 Houses of Parliament, committed perjury for the pur-  
 pose of concealing the embarrassments, and misrepres-  
 enting the circumstances and affairs of said Company.)

And that in another part of this Pamphlet, the  
 said Defendant falsely and maliciously printed and  
 published of the Plaintiff, and of the Plaintiff as  
 such Director and Chairman of said Company as afore-  
 said, the false, scandalous, malicious, and defamatory  
 words following, that is to say, “ if Lord Erne”  
 (meaning the Plaintiff) “ meant that the unissued  
 “ shares, if sold at so much would make such and  
 “ such a sum, and that the line, if made at so much  
 “ a mile would cost such and such a sum, and that if  
 “ all these ‘ ifs ’ turned out right, the first ‘ if ’ would  
 “ give a balance of £60,000 over the second ‘ if ’ ; why  
 did he” (meaning the Plaintiff) “ not say what he  
 “ meant, and then, though only three years have  
 “ shown that his calculations were altogether astray  
 “ on both sides, he would not now be liable for blame,  
 “ perhaps liable to a serious amount of money for as  
 “ Trustee making statements to get a branch Act,  
 “ the truth of which he could have ascertained by  
 “ proper enquiry, and which turn out to be quite wrong  
 “ and of deep injury to us,” (meaning the shareholders  
 of said company, and meaning thereby that the Plain-  
 tiff had made statements before a committee of one of  
 the Houses of Parliament, for the purpose of pro-  
 curing an Act of Parliament, authorizing the con-  
 struction of a branch line of Railway which had turned  
 out to be false in fact, and of deep injury to the

shareholders, without having previously ascertained by proper enquiries the truth or falsehood of such statements. And the Defendant further meaning thereby that the Plaintiff had, in order to deceive the Committee of one of the Houses of Parliament, before which he had been examined as a witness, and for the purpose of obtaining an Act of Parliament for the construction of a Branch Railway, stated in terms before said Committee, that the Directors of said company had then money enough to finish the line to Enniskillen, and £60000 over and above, towards branches, and that if he, the Plaintiff, meant not £60,000 in money, but meant £60,000 value in shares, the Plaintiff had culpably concealed his real meaning, and had in breach of his duty, refrained from expressing his meaning explicitly.

By means of the committing of which grievances by the Defendant, the Plaintiff complained that he had been, and is greatly injured in his said good name, credit, and reputation, and had been brought into public scandal, and disgrace, and had been disparaged and defamed in his said Office of Director and Chairman of said Company, and exposed to the suspicion and imputation of corrupt, fraudulent, and careless conduct therein, and of culpable and reckless disregard of truth in his official statements, and otherwise injured. To the Plaintiff's damage of £2000.

And the said John Grey Vesey Porter, on Wednesday, the 5th day of January, 1859, has taken defence, and alleges as to the first count of the said summons and plaint, that the alleged libellous matter therein set forth, was not and is not a libel as alleged. And for a further defence to the said count alleges, that the alleged libellous matter in the said count set forth, was not, nor was any part thereof printed and published in the defamatory sense averred.

And to the second count of the said summons and plaint, the said Defendant says that the alleged libellous matter in the said count set forth, was not and is not a libel as alleged. And for a further defence to the said second count, the said Defendant says that the alleged libellous matter therein set forth, was not, nor was any part thereof printed or published in the defamatory sense averred.

Therefore let the Jury try—

FIRST—Whether the matter in the first count of the said summons and plaint set forth as libellous, or any part thereof was or is a libel as in the said count alleged.

SECOND—Whether the libellous matter in the said first count set forth, or any part thereof was printed or published in the defamatory sense in the said count averred.

THIRD—Whether the matter in the second count of the said summons and plaint set forth as libellous, or any part thereof was or is a libel as in the said count alleged.

FOURTH—Whether the libellous matter in the said second count set forth, or any part thereof was printed or published in the defamatory sense in the said count averred.

RALPH SCOTT,

*Attorney for said Plaintiff.*

WM. F. LITLEDALE,

*Attorney for said Defendant*

# Court of Queen's Bench.

*Saturday, February 12th, 1859.*

(BEFORE THE LORD CHIEF JUSTICE AND A SPECIAL  
JURY OF THE COUNTY OF DUBLIN.)

THE EARL OF ERNE v. JOHN GREY VESEY PORTER, ESQ.

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This was an action for a libel published of the Plaintiff in his capacity of Chairman of the Dundalk and Enniskillen Railway Company. Damages were laid at £2000. The Defendant pleaded that the words complained of did not constitute a libel, and that they were not published in the defamatory sense alleged.

The Right Hon. the Attorney General, the Right Hon. Abraham Brewster, Q.C., Mr. Fitzgibbon, Q.C., Mr. Macdonogh, Q.C., and Hugh Law, Esq., appeared as counsel for the Plaintiff, with Mr. Ralph Scott as agent.

Mr. R. Armstrong, Q.C., Mr. Lawson, Q.C., Mr. Sullivan, Q.C., and Mr. James Murphy, were counsel for the Defendant. Mr. Littledale, agent.

Mr. Law having opened the pleadings—

The ATTORNEY GENERAL proceeded to state the case. He said—Gentlemen of the Jury, in this case I appear as counsel on the part of the Plaintiff, and, Gentlemen, he is described (and it is not disputed) as a peer of Parliament, as the Lord Lieutenant for the county of Fermanagh, and, in addition, as filling an office of some utility in the country—that of Chairman of the Board of Directors for the making and management of the railway between Dundalk and Enniskillen. Gentlemen, the Defendant is Mr. John Grey Vesey Porter, and he is also a gentleman of station and of fortune, descended from a reverend bishop, and possessed of a considerable stake in the country. Gentlemen, the action is brought for libel; and, as in every enquiry it is useful, if we can, to be short and to be clear, it is essential

that you should, in the first instance, clearly comprehend what it is you have to try, and from what subjects you are relieved. Gentlemen, when an action of libel is brought by a party in a court of justice, his adversary may say in his defence, "Quite true, I described you as a knave, as a perjurer, and as a profligate person, and I am now ready to prove that you filled those three characters—that you are a knave, and gave me reason for so describing you; and I say that you did speak falsehoods on certain occasions, because, being examined as a witness, you said that which was untrue, and therefore I impute to you the crime of wilful falsehood or perjury." That case may be set up under a plea of justification, and that is an honest plea. It is a plea that a man resorts to when he has a defence in point of fact and truth, to justify that which otherwise would appear to be a malignant slander on the character of his neighbour. Gentlemen, he may also plead, if he thinks fit, that he did not publish the libel at all; because there may be many persons who are supposed to be the authors of written publications who are not so, and there cannot be a fairer defence than to say, "I am not the author of the libel." He might also say that from a certain relation which subsisted between him and the Plaintiff that he was privileged to describe him in what otherwise would be a libellous form of expression—that from a sincere desire to investigate truth and do his duty to his brother directors or shareholders in a public company, and from no improper or malicious motives, he did describe the person complaining in a manner that he would not be permitted by law to do, if he did not fill the situation which he showed himself to stand in with respect to that person. In the present instance, Gentlemen, you are relieved from all such investigations. It is important to observe, in reference to the libels complained of here, that the Defendant, (and I don't in the least blame him for it) does not justify a word that he has written. He does not maintain the truth of one single sentence that he has composed in a very able and skilful composition which he has extensively circulated throughout the country. Therefore you are in the happy position of

having it confessed on the part of the Defendant that what he has written is not to be justified. He says however, and this is the point of his defence, "That the part of the publication of which the Plaintiff complains is not a libel. Now that is an intelligible defence and a fair defence, but in the present instance it is no defence as you shall see. And secondly he says, "If I did publish all that—I did not publish it in the defamatory sense which you allege." The sense in which he did publish it will doubtless be discovered by his counsel, who is the only man in the world who can discover an innocent sense for the language of which my client complains; and then, Gentlemen, according to the law, you will have to find out, first, whether the document complained of is a libel, and secondly, whether it was published in the defamatory sense ascribed to it. Every other question is excluded from the enquiry, and I have gone to the last part of my brief, which is very useful to do sometimes, for the point of the matter lies there, and I find there are only those two questions for your consideration, which, with the permission of the court, it is my intention to discuss.

That being so, I take in my hand what is called the Record, which is short and convenient, and address myself to the question before you from that document, because I have informed you that you are relieved from all inquiry as to whether this gentlemen, Mr. John Grey Vesey Porter, published the document to which I invite your attention. He admits he did, and you have therefore the author before you to make what defence he can for himself. It is not a verbal slander of which my noble client complains. The action is brought for a written and published pamphlet in which the character of the Plaintiff, according to the Plaintiff's assertion, has been foully aspersed. The preliminary matters necessary to understand the libel set forth in this record and not traversed, are very few. I think I have already suggested them to you. The Plaintiff describes himself as a Peer of Parliament, as holding the high office of Lord Lieutenant of the County Fermanagh, and also as being Chairman of the Board of Directors of the Dundalk and



Enniskillen Railway. Hitherto my noble client has been considered to be an honest man. This is the first time that he has been obliged to come into a Court of Law to ask that measure of justice which a Jury alone in this case can award. Having made these preliminary averments the record proceeds to state that the Defendant, in order to bring this noble Plaintiff into public scandal, infamy, and disgrace, did, on the 9th of August last, falsely, wickedly, and maliciously, print and publish a certain book or pamphlet of him in his character of a Peer, in his character of chairman and director of the public company to which I have already referred. The record then sets forth the first paragraph complained of, and which is not disputed by the Defendant—the only question being whether it is libellous, and whether the right interpretation has been put upon it, of which, gentlemen, you unquestionably are the best judges. The Defendant in this passage briefly moralizes, and in the course of an apparent desire to tell the truth he strikes at the character and assails the reputation of the Plaintiff in the following terms—“ Still men often take different views of affairs and are liable to mistakes ; let us therefore in charity suppose that Lord Erne and our directors had our interests at heart. But why have improper means, improper patronage, improper political influence been used to promote views which have now failed, and with the most grievous injury to our property.” Now, gentlemen, don’t misunderstand the argument that I am about to address to you. Mr. Porter, a gentleman of fortune, and I think of talent, which sometimes, as in the present instance, he sadly misapplies, has a right to criticize as he pleases—he having some interest in the Company—the mistakes, or want of judgment or error that may in his opinion have characterized the management of the Directors ; but the moment he insinuates of a gentleman in the position of the Plaintiff that he has by improper means, improper patronage, and improper political influence, promoted views which have not only failed, but destroyed the property of those over whose property he was bound to watch, he writes that which is libellous—a libel of the Plaintiff as Chairman

of that Board of Directors—a libel which he has challenged the Defendant to justify, and which challenge he has shrunk from accepting. Now, gentlemen, what is the meaning put upon that passage? The meaning is the simple and natural one which the words will bear. The meaning is that the Plaintiff, the Chairman, and others who were Directors of the Dundalk and Enniskillen Railway Company, however charitably it might be supposed that they had the interests of the shareholders at heart, yet they had used improper means, improper patronage, improper political influence to promote views that had failed, and had thereby caused great injury to the property of the shareholders. Now, gentlemen, in asking yourselves whether that imputation is a libel or not, you must ask what was the duty of Lord Erne in the situation, which to the credit of a man of his rank, fortune, and position he had assumed; for I should like to know what rank ought to exempt a man from the performance of the duties of life; and is there any better duty than to make a good road for honest men to get to their homes quickly, and to promote the commerce of the country. What Lord Erne says is—"I have done my duty in that position honestly. I have done that which I ought to do, and I have not done that thing which I ought not to have done;" and, gentlemen, the charge made against Lord Erne in the passage I have read is, that he had done that which he ought not to have done; for I tell you, that to assume of any one of you that you have not used your patronage, but abused it—not that you appointed proper persons, but that you appointed improper persons—and that you acted in a way which amounted to a perversion of political influence for the purpose of destroying the property of those shareholders whose interests you were bound to protect, is a libel of a defamatory character. The only sense which such an imputation can bear has been put upon it by the innuendo. In truth, it required no innuendo to express it, for the meaning is implied in the very words themselves. Don't be deluded by the idea that any one who takes a high public office may be exposed with impunity to slanderous and calumnious imputations.

There is an instance in point which I may mention to you. A gentleman was a candidate to be member of parliament for a large metropolitan borough at the other side of the water; and some one, by way of canvassing his politics, gave a very offensive account of him, for which an action was brought. "Oh!" said the Counsel for the Defendant, "I only spoke of this gentleman as a public man." "But," said the Chief Justice, "it does not follow that you have a right to say of a man who aspires to public life, that he is a rogue, who prefers his interest to his duty. To publish this to the world is defamation, and if you cannot justify it by shewing that you have spoken the truth, you must answer in a Court of Law for your slander." That is precisely the present case. I cast no imputation on Mr. Porter. It is because he is a man of station and of fortune, that this action is brought against him, requiring him to restrain or moderate his tongue or his pen, or pay the penalty. Observe, he specifies no improper action on the part of Lord Erne—he names no unworthy person that has been appointed—he cannot point out a single instance, in which these unworthy means and improper patronage have been resorted to, to carry out the purposes of the Plaintiff; but he says, "I have a right to speak of him as a director and chairman of this railway company, and to say of him what I have said in that pamphlet." Gentlemen, if Mr. John Grey Vesey Porter, wished to discuss that question before the directors or any question—for he suggests none—it is general assertion and general calumny—if he had chosen to call Lord Erne before the Directors or Shareholders and said, "Your Lordship has, on a particular day, appointed a particular man to a particular office—he is a dishonest and immoral man—he will place in jeopardy the property of the shareholders, and I will take the opinion of the shareholders on this conduct,"—he would have a perfect right to do so, and it would have been the manly and the honourable course to take; but it is a perversion of law, it is a flat contradiction of law—to say that Mr. Porter, or any other gentleman in his station of life, shall publish a foul slander like this, and say to the aggrieved person, "I

do this because you are a public man, and a fair mark for the shafts of calumny." Gentlemen, that is not to be tolerated. You may criticize the conduct of a public man freely and fearlessly, but you must not impute to him corrupt, dishonest, or improper conduct, unless you are able to prove it. The next passage of which my noble client complains is one of a much more serious character. We say that in another part of said Pamphlet, the Defendant falsely and maliciously published of the Plaintiff the following scandalous and defamatory words—namely, "Why has truth been disregarded in our Directors' statements? Why did Lord Erne swear before Parliament in 1855, that our Directors had then money enough to finish the line to Enniskillen, and £60,000 over and above towards branches? I cannot imagine why Lord Erne hit upon this moderate sum of £60,000; when he once left the terra firma of plain truth, he might just as well have said £100,000, or £200,000. A Company in debt, with its shares at a discount, and that has twice since been obliged to go before Parliament to raise money, might, with equal truth, have laid claim to any sum, to any castle in the air." Gentlemen, there is an innuendo to that, though it required none. I have no doubt that you will adopt it as conveying the true meaning of the words. The innuendo is, "The Defendant, meaning thereby that the Plaintiff so being chairman of the said company, had disregarded truth, and that having abandoned the firm basis of truth as a foundation for his statements, the Plaintiff had indulged himself in false and visionary assertions and airy fictions; and had falsely sworn before Parliament, in the year 1855, that the directors of the said company had then money enough to finish the line to Enniskillen, and £60,000 over and above towards branches." Have you any doubt about the meaning of that; because if you have, gentlemen, it is an unfortunate circumstance for my client. The meaning is plainly this—You stated that falsehood before a committee of the House of Lords when on oath. You swore as a matter of fact, that there was a sum of £60,000 in hands, over and above the sum required for the construction of a certain line of rail-

way to make branches to other lines of railway ; and it would have been as true or as false to have stated £200,000 ; for when you abandoned the truth, you might as well have made your lie of large dimensions, as of the moderate dimensions that you have sworn to.

Gentlemen, I cannot imagine what construction my learned friends will put upon this passage, or what defence they will make for their client ; but if you can look your fellow-countrymen in the face, and say that you will allow a Defendant, be he whom he may, to impute to a man, upon whose unblemished character the breath of scandal has never rested, so foul, so false, and so scandalous a breach of duty as this—namely, that he went before his brother peers and pledged his oath to a lie—and if you say that that is not defamation we ought to burn our books and close the doors of this Court of Justice ; for Justice would be administered here no longer. A fouler imputation it is impossible to cast on any man ; for truth is the foundation of all sound and fair dealing between man and man—truth is the foundation of justice, it is the highest of social duties, and of personal virtues. A man who speaks truth regularly through life is a man, who not only has his conscience right, but is a perfect benefactor to society, by setting a good example, which, I am sorry to say, is not always followed. What would you say, gentlemen, of a man who said of you, that being empannelled as Jurymen on a particular day, you, on your oaths, exactly reversed what you ought to have done, and instead of acting on truth, acted on falsehood. Gentlemen, I read this passage with pain. I am astonished how a gentleman in Mr. Porter's position, a gentleman of education, of high character and of large fortune, could deliberately write that of a man of whose character he does not complain, or say in this libel that the character given as a preliminary inducement to the statement of the libel is not just and true. I say that Lord Erne would have deserted the duty which he owes to this body, of which he is Chairman, elected by them and trusted by them, as he is trusted by every right-thinking man in this country—he would have abandoned his duty to him-

self and to the high position which he occupies, if he did not come before a Jury of his countrymen and challenge his calumniator to the proof of his assertions. Lord Erne has done so. He has come into this Court, and he says to the Defendant, "Sir, where is your proof that I have acted in the disgraceful way you describe? When did I swear the thing that is false? When did I abandon the solid ground of truth, and ascend into the airy region of fiction?" Gentlemen, consider this passage, consider it calmly, consider it closely—it is an imputation, that on a given occasion specified, Lord Erne gave evidence before a Parliamentary Committee, and that he disregarded truth in that evidence. Mr. Porter asks—"Why did Lord Erne swear before Parliament, in 1855, that our Directors had money enough to finish the line to Enniskillen, besides £60,000 over and above, towards branches?" Now what defence was open to Mr. Porter? You perceive the whole struggle here will be to evade the law, and by slippery means to get out of the clear justice of the case. What might Mr. Porter have done? His pleader might have done this: he might have said, "True, I used those words, and I used them, because I say that on a given day in 1855, you were examined before a Committee of the House of Lords, you were sworn, and you did depose to the very words that I have set forth in my pamphlet." Gentlemen, that is the defence which the law requires him to make; and I say you will turn aside from your duty if you do not say—"Here is a direct charge of false testimony made against Lord Erne by this gentleman. Where is his proof?" The Act of Parliament requires him to put his proof on the record that we might be prepared to come here to meet him. He puts no justification on the record, and he must now take the consequences of his refusal to do so. I say it is a foul calumny, and feeling it to be such, I call on you to resent it, precisely as you would do if it were made of any one of you. I do not say of Lord Erne that he is entitled to a more favourable consideration than any other Plaintiff in a Court of Justice; but he is entitled, at least, to the same measure of justice as any private person in the community;

and I say it would be a denial of justice, if you should not mark your sense of the character of this slander, and by doing so you will give a lesson to Mr. Porter, which I trust he will long remember. A lesson in a Court of Justice is often more effectual than a sermon ; because, gentlemen, it impresses itself on the pocket, and I have no doubt, however Mr. Porter may value what good men tell him, Sabbath after Sabbath—not to speak ill of his neighbour, and so forth—yet, gentlemen, your lesson, vigorously enforced and speedily applied, will have an excellent effect on the conduct of this gentleman in future.

Gentlemen, if the libel, so far as we have proceeded, is foul and malignant, I think the next passage is the climax of the whole, and if I were to consult my own notion of the case, I would be disposed to close here ; but knowing that some attempt will be made to rescue the Defendant from the disagreeable position in which he stands, I must therefore go through the whole of the passages in which the character of my client is assailed. The paragraph to which I shall now call your attention begins with a legal disquisition. The Defendant proceeds to inform the public that a certain Act of Parliament was passed, and he ushers it in in this way, "Observe what a serious view the Law takes of statements of this kind" (referring to the first line of the former sentence, "why has truth been disregarded in our director's statements.") That disagreeable Act of Parliament, "For the punishment of fraudulent Trustees, 20 & 21 Victoria, chap. 54, says, section 8, "If any director of any public company shall make, circulate, or publish, or concur in making, circulating, or publishing any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any money or property to such public company, or to enter into any security for the benefit thereof, he shall be guilty of a misdemeanor." That is a very correct quotation from a certain Act of Parliament that was passed for the purpose

of dealing with fraudulent trustees and fraudulent directors, and I believe one of the cases which induced the Legislature to pass this measure was the case of the Tipperary Bank with which the Chancellor is at this moment engaged. The Legislature interposed with this Act for the purpose of putting an end to such gross frauds, and now if any persons put forward false statements as to their amount of capital to induce foolish individuals to give them their money, this Act of Parliament will reach such fraudulent trustees and lodge them in the dock, there to answer for the falsehood that they knowingly published in order to take in innocent men in the community. One cannot but regret to find an Act of Parliament passed to create a new crime, but it was necessary in consequence of the gross and scandalous frauds that were committed in Ireland and in England on the innocent and unsuspecting. I quite concur with Mr. Porter that he is most correct in his quotation of the provisions of the Act, but, Gentlemen, he then goes on to say that it is by a mere fatality that Lord Erne is not in the dock. You observe, Gentlemen, the words in the Act, "If any director shall publish a written statement, or concur in the publication of a written statement," that is the Act requires that the statement should be in writing—as for example, that a director should write that a certain company had a capital of £200,000 on a given day, and was able to pay a dividend of ten per cent, with a view of inducing the public to give their money to the directors or trustees who put forward that statement in writing. You observe, gentlemen, that by the former passage, Mr. Porter imputes to Lord Erne that being examined on oath as a witness he made verbally the falsehood that has been described to you—namely, that the railway company had a large sum of money for a certain purpose, which the Defendant says was a mere fiction. Mr. Porter then proceeds to give a very correct reading of the act. He says, "The spirit of this Act is that directors of public companies are trustees of other persons' properties, and besides the moral offence are liable to legal punishment for any false statement made by them in their management, though in order to include only matters likely



to be capable of positive proof *spoken* false statements are purposely omitted, and therefore so far go scott free. "Now what is the meaning put upon that by the learned pleader. "The Defendant meaning thereby and imputing to the Plaintiff that the Plaintiff had been morally guilty of uttering false statements though not punishable under said Act of Parliament, and that the Plaintiff had escaped the punishment of the misdemeanor punishable under the said Act of Parliament, for the punishment of fraudulent trustees, by reason of his false statement having been spoken only and not written, and that if the said statements by said Defendant imputed to the Plaintiff, had been written by the Plaintiff, the Plaintiff would have been guilty of a misdemeanor punishable under said Act of Parliament."

Nothing can be more plain than that this is a scandalous libel. He does not attempt to justify it. His mouth is stopped, for by the advice of his Counsel he admits it to be false. Its truth is not in issue before you; the defendant has not attempted to justify it because he could not do so, and we are not permitted by law to go into evidence as to a matter that is admitted on the record. Being false, then, what is it? "I first shew that you, a Peer of Parliament, have forfeited your honor, and, instead of being an ornament, are a disgrace to your country. I say that you stated on a given occasion, a falsehood on your oath—and I tell you more, had you written that statement, you, Lord Erne, would be now in jail, put in the dock, and called on criminally to answer for your crime under a violation of this Act of Parliament. You have escaped, because you do not come within the letter of the law, though you have violated its spirit. I will put you in the pillory of public opinion. I will proclaim you in my pamphlet as a man who is as guilty as many of those men who have been tried and transported. I will shew that you have escaped by a technicality that punishment which your falsehood and your breach of your duty as a director have richly deserved." That is no ordinary libel which Mr. Porter has presumed to pen and publish of Lord Erne. He is bound to answer for it, not at the bar of public opinion, but at

the bar of justice. It is the best place in the world to investigate truth, because the investigation is conducted in a form and manner that are not likely to lead into error. He is bound to come here and to put his defence on record; but he has no defence to offer, but that the language complained of does not bear the natural and rational meaning of the words, of which, gentlemen, you are the only judges. I can't see that any witnesses are necessary to prove this innuendo. Is not the meaning of the passage clearly this: "If you had written what you have sworn to, you would have been placed in the dock for the violation of the fraudulent Trustee Act. You are a fraudulent trustee, you are an immoral director, you are a cheat, you are a false speaker." I don't care whether it is the strict crime of perjury, or a mere abandonment of truth, that is imputed to my client,—I give to my learned friends all the benefit of that nice distinction. I hope if that sort of defence be offered, you will meet it as it deserves, and say, "Sir, you have endeavoured to convey your calumny so as to escape the punishment of the legal crime, while you heap on your adversary imputations of moral corruption and moral guilt, and you will not be allowed to do this with impunity." I say, gentlemen, that it is a scandalous libel, and I call on you to vindicate the law by pronouncing your reprobation of it. Having disposed of that passage, I now come to the next that is complained of. Nothing can be more hurtful to a person in the position of my noble client and friend, than that in the country where he lives people should imagine that he has been guilty of the offences imputed to him; but not only is it libellous and defamatory to charge a man with a breach of morality, with want of truth, or with a criminal offence, it is likewise most offensive and defamatory to bring him into ridicule and contempt. We shall see Mr. Porter in another light, by the next paragraph which I will lay before you. It is as follows:—

"I quite concur in the general opinion that Lord Erne, in these and in many similar statements, is only the dupe in matters he does not understand, but I am astonished that, in justice to himself as well as to our interests, he

does not either inquire carefully into their truth beforehand, or else give the authority upon which he makes them."

In all human probability it will be attempted by Mr. Porter's counsel to say that the former passages, if they stood alone unexplained, would be very bad—utterly indefensible, but that they were qualified by this and other passages of the pamphlet. It will probably be said, "don't you perceive that, while the first part of our pamphlet represents Lord Erne as a knave, we really only mean to exhibit him to the world as a fool. He is a dupe!" That is a pleasing description to give of a gentleman who is a judge himself, and a judge in the highest court in the realm! He is a dupe and a fool. He is made the tool of men who stuff anything down his throat. He is not capable of reasoning, he is a poor weak deluded creature. If he had my reasoning powers (Mr. Porter will say) my bright faculties, my general knowledge of law and of the Fraudulent Trustees Act, he never would have fallen into these errors; but this poor driveller—he is the dupe of attorneys and of impostors that surround him. True! he owes no man anything; he pays his debts; and he lives in the country where his property lies, discharging every duty of life with exemplary fidelity; but still I will hold him up as a driveller, a dupe, a fool, and make my defence to the Jury, that it is a mistake to say I charge him as a perjurer and a knave, for instead thereof, I only mean that he is a dupe, a driveller, and an idiot. Gentlemen, that is a most scandalous and insolent passage. It is a dangerous thing to write a book—it is a dangerous thing to write a pamphlet; and I doubt not the result of this trial will be such as to curtail and limit the authorship of the respectable gentleman for the principal portion of his future life. Now comes a piece of sarcasm. Here this gentleman tries his hand at irony, and no doubt he is a master of ironical writing. He says, "I have now to exhibit Lord Erne to you in addition as a thorough-paced hypocrite, adding to the turpitude of his public conduct, the blackness of a mean hypocritical dissembler—as a canting preacher of what he did not believe and never practised." What is this passage

which Mr. Porter ventured to write of Lord Erne? Continuing the sentence that Lord Erne should give the authority upon which he made certain statements, Mr. Porter goes on—"For they come with great force on public meetings from a man who is often chairman of Church Education Societies—that, no doubt, have no special license to dispense with truth in railway matters of hundreds of thousands of pounds, which is so vigourously and so justly preached in small matters of a few shillings at church, at petty sessions, and between poor struggling men, tempted by hunger, pressed by distress, &c., &c."

I appeal to you now, gentlemen, whether a more shameful conclusion to a violent and scandalous piece of defamation can be well conceived? It amounts to this—"you Lord Erne—(and this is true I admit) you take the chair at religious meetings in the country—you are an impostor for so doing. You do more. You go to church (that I believe to be true also), and while there you listen to sermons that are preached telling the poor to be honest—you are a magistrate, (that is true) you sit at petty sessions and you lecture humble people upon the duty of being honest in their dealings to one another. Oh, you whited wall—you hypocrite, you depraved man! the whole of this is hypocrisy, the whole of this is cant, execrable cant. While you sit in the chair at religious societies, while you talk piety, you don't believe a word you utter, and you never practise what you preach. You sit as a magistrate dissembling justice, calling on the poor men of your county to do justice to one another in a matter of a few pence, while in matters in which hundreds of thousands are concerned—in railway matters—you dispense with the laws of morality and justice—you abandon truth, you cheat your neighbour, and do in reference to the rich that very crime which you punish the poor for doing even when they are stung by famine or maddened by despair." I tell you, gentlemen, that that is an infamous libel. What right has Mr. Porter to criticise the conduct of Lord Erne in this particular? If he, the descendant of a bishop, never takes the chair at religious meetings, and Lord Erne discharges the duty which he has deserted, and exerts himself to promote the knowledge of God, and to extend the blessings of morality and of

education, is that a reason why he is to be assailed, and told that in railway matters he is a cheat? Mr. Porter is a magistrate, and if he, being as I believe a just man, discharges his duty honestly, what right has he to turn round on the Lord Lieutenant of the county and say—"This nobleman sits at petty sessions, and while he preaches to his fellow men the duty of being just to one another, is himself unjust and dishonest in matters of hundreds of thousands of pounds respecting railway subjects." Mr. Porter says to Lord Erne, "you dispense with all morality, but a person holding the position you do is especially bound to be honest and honorable in his conduct." My client admits that, and we came here to have his conduct thoroughly investigated; but Mr. Porter has wisely avoided all such enquiry. He has not ventured for the best of reasons—that it was impossible—to justify his language, and his counsel know that unless he put that on the record, neither he nor Lord Erne could be heard on the subject. Now, gentlemen, in considering your verdict, you are not at liberty to ask whether the Plaintiff is rich or is poor. You are to say what is the measure of compensation that ought to be awarded against the defendant for the compositions of such an offensive attack on Lord Erne. I don't say it is as criminal a libel as the preceding ones; but if you believe that it is intended to ridicule my client and hold him up to the contempt of his fellow men, he is entitled to a large measure of damages at your hands. The innuendo to that paragraph is as follows:—

"Meaning, and by insinuation imputing to the Plaintiff that the Plaintiff had used a certain reputation acquired by him as Chairman of Church Education and religious societies in order to impress said imputed false statements with greater weight upon the public meetings to which he uttered said imputed false statements; and further meaning that the Plaintiff had vigorously and justly preached the necessity of adhering to truth in small matters of a few shillings in church and petty sessions, and between poor struggling men tempted to falsehood by hunger, and pressed to it by distress and other compulsion, but that in railway matters of hundreds of thousands of pounds the Plaintiff had assumed to himself the license of dispensing with truth; and further meaning by said last mentioned paragraph of said

pamphlet to insinuate that the Plaintiff had been guilty of the hypocrisy of preaching a regard to truth to other people in small matters, while the Plaintiff himself exercised the license of dispensing with truth when large pecuniary interests were concerned, and when inclination prompted him so to do."

Here is the next paragraph complained of by the Plaintiff:—"There is also this further reason for regretting Lord Erne's conduct as to these branches. The shareholders have not forced them on the directors, but the directors on the shareholders. The directors even suspended the usual printed list in our company of all shareholders, showing how many shares each man held on purpose to prevent the combination of their majority against any branches made with preference shares. Yet, common prudence should have made Lord Erne, at the head of the company, but not able to attend to its detailed management, require that every shareholder's opinion should have been fairly taken, before a branch act was sought, about which such different opinions existed. Lord Erne, with their own opinions to refer the majority to, would then be free from blame. But in place of this conduct he assisted the solicitors in every way in quashing and overwhelming the shareholders' wishes."

Meaning (according to the innuendo) that the Plaintiff, in breach of his duty as such director and chairman of said Dundalk and Enniskillen Railway Company, assisted the solicitors of said Company in quashing and overwhelming the wishes of the shareholders of said Company. It means this, that the shareholders are of one opinion of which there is not a particle of proof, because it is admitted not to be true, and that Lord Erne had entered into a confederacy with the solicitor, the object of which was not to carry out the wishes of the shareholders but to overwhelm them, to stifle them and crush them; than which you will admit there could not be a more flagitious and scandalous breach of duty as a director. There is another passage complained of which I will now read for you: "The great loss to Fermanagh from Lord Erne's railway mistakes requires little notice, because the loss of several years delay, the annoyance of cars and coaches for several years longer than necessary is plain to every man, and because in my opinion in

the management of a railway, as of every public company, the interests of its shareholders are its first and sacred claim, while local interests only deserve second attention. This principle may seem hard, yet it is the only sound principle that will lead capitalists quite unacquainted with the places themselves and looking only to their own interests, to risk money in public companies that could not exist without their confidence and assistance. In our case, however, the interests of the D. K. and E. R. C. and of the County Fermanagh, are and have been from the beginning identical. Is it not, therefore, a sad, perhaps an irreparable loss to this county, that besides these long delays, which, once over, might be forgotten, its main railway will not be, though last, the best in Ireland with the advantage of the experience acquired on earlier lines, but so closely run are the company's means by their directors' law suits, disfigured by every exploded penny-wise-pound-foolish makeshift, though certainly our edifices at Lord Erne's village of Lisnaskea do not show any want of money."

The meaning of this is, that Lord Erne connived at the alleged misconduct of the directors in consideration of the building of certain edifices at the expense of the company, of a character and costliness incompatible with the embarrassed affairs of the company, at the Plaintiff's village of Lisnaskea. Mr. Porter says to Lord Erne, "you sir are a director and chairman of the Company, and while you affect to be guarding the interests of the shareholders you are looking out to do a little job for yourself, and you want to have fine buildings at your station at Lisnaskea, and you were regardless of the other interests which as an honest chairman you were bound to protect." In other words the charge was, he compromised the office he held in order to perpetrate a nasty, dirty, disgusting job. The next passage complained of is as follows—"It seems to me to be a common trick of Directors and a common error of Shareholders to make the solicitor the scape-goat for all the company's misdeeds, but if Directors are independent—if one man does not want an extravagant station in his village, and another well-paid places for needy relatives, and therefore bend to the solicitor's influence at the board, he can do no harm, and the Directors, who can dismiss him when they think fit, are therefore

responsible for him while they keep him"—meaning (according to the innuendo) to insinuate and impute to the Plaintiff, that the Plaintiff wanted and had desired to have an extravagant station built with the capital of the said railway company at the Plaintiff's village, and that for the purpose of obtaining same and of accomplishing said desire, the Plaintiff had corruptly and in breach of his duty as a Director and Chairman of said company, yielded and bent to the influence of the solicitor of the said company at the Board of Directors of the said company. This is a slander on the solicitor—however, that is his affair. I am speaking of Lord Erne, and the imputation on him here is, that he played into the hands of the solicitor of the company, which is all imaginary, all invented by Mr. Porter for the purpose of stinging the character of Lord Erne. "You have got," he says, "a *quid pro quo*; in consideration of your supporting the hungry hangers-on of the solicitor, he has bent to assist you in your projects; you are *par nobile fratrum*; he has got a job in hand, and you have got a job in hand, and you combine together to carry out your respective plans, and for doing so I hold you up to the ridicule and contempt of the public." Gentlemen, Mr. Porter has altogether mistaken his rights—he has altogether mistaken his duty, if he thinks he is at liberty to write in this way of the character of his fellow men.

There is one other passage set out in this Record. After the sentence in which Mr. Porter accuses Lord Erne of having sworn falsely before a Parliamentary Committee, he goes on to say—"If Lord Erne meant shares and not money—if he meant that the unissued shares if sold at so much would make such and such a sum, and that the line if made at so much a mile would cost such and such a sum, and that if all these 'ifs' turned out right, the first 'if' would give a balance of £60,000 over the second 'if,' why did he not say what he meant, and then though only three years have shown that his calculations were altogether astray on both sides, he would not now be liable for blame, perhaps liable to a serious amount of money for, as trustee making statements to get a branch act, the truth of which he could have ascertained by proper enquiry, and which turn out to be quite wrong and of deep injury to us." Now, gentlemen, the nature of that passage requires to be ex-



plained and understood. Mr. Porter now wishes to represent himself to you as a man of candour. "I have destroyed the character of Lord Erne," he says, "by the account I have given of his swearing before the House of Lords, but perhaps something can be said for this deluded man. I will show him up as being not only a great knave substantially but a great fool; because I will imagine a series of 'ifs'—if the unissued shares were sold they would produce so much—if the railway were made for so much we would have a residue of so much—all these 'ifs' may make out a case for this deluded man, and if so give him the benefit of my defence for him." Gentlemen, that is most insulting, for it says substantially that Lord Erne is a man absolutely incapable of investigating truth, which Mr. Porter has no right to impute to him. Mr. Porter would himself feel grossly insulted if such an imputation were cast upon him. He means to say by it, "If you Lord Erne did not mean to swear it, I will excuse you by saying you swore erroneously, because you have no means of knowing the truth, or because you could have ascertained the truth, and did not"—that means that a man wilfully shut his eyes to the truth. This paragraph then which has been put into a second count, and which belongs to the first paragraph I have read to you, clenches the case against this Defendant by showing that he puts forward the only possible defence or modification of the defence he charges against Lord Erne; and that is by a series of "ifs" which are all ridiculous and false, you might imagine that Lord Erne was not altogether so guilty as he is before represented to be—that he gave erroneous, false, and ridiculous testimony, but that he is merely a silly fool incapable of investigating or discovering truth, and, gentlemen, he sits here to day to tell you that that is not a libel. Could Mr. Porter himself look his fellow-countrymen in the face if he were guilty of the turpitude that he seeks to fasten on my noble client? Gentlemen of the Jury, he would feel, he would resent it as a gentleman and a man of honor, and therefore I ask you to give me the redress as against him, that you would give to Mr. John Grey Vesey Porter if he were the plaintiff, and my respectable, truth speaking, high minded and religious client were the Defendant. Gentlemen of the Jury, I call on you as you

respect the law, as you esteem the character of a man who performs every duty of life with exemplary fidelity and honor, not to listen to the defence that will be put forward in this case. "Oh! who believes those calumnies against Lord Erue, his character is too high—he never cheated or deceived any man or acted in any way inconsistent with his high and honorable name." Gentlemen, that does not justify the author of a calumny in aspersing character because it is good. The slanderer has no right to say, "no doubt I calumniated you, but you are so excellent a man that the calumny cannot reach you." There is no character so high that ridicule, slander, and falsehood, will not in some degree impair, and above all there are the feelings of the gentleman himself to be considered. His own just self respect has been wounded—his position in the country has been injured by these foul libels. They stand before you as I have stated them from the beginning to the end, unjustified and admitted on this record to be false. They charge my client with an abuse of patronage, with speaking and swearing what was false, with being a fraudulent trustee, with being a paltry jobber, with being a hypocrite and an impostor—a man that talks religion, but does not practise it, and he is the worst of impostors—and then he is held up to the ridicule and scorn of the public, as a dupe, a driviller, and an idiot, incapable of discerning truth, and liable to be imposed on by selfish and designing men. Under these circumstances, gentlemen, my client asks for justice from you, and I have no doubt that you will administer it. I ask your pardon for having trespassed so long upon your attention, but long as my address has been I have confined myself strictly to the record, and the case that it sets before you. I have no doubt that you will do that justice to my client which your better sense will award, and I have no doubt that whatever your decision may be, it will be one that he and all others will bow to with that respect to which the verdict of a conscientious Jury is entitled.

Mr. BREWSTER, Q.C., then said that he proposed to read from the Record, the libellous passages and the innuendoes.

Mr. ARMSTRONG, Q.C.—I will tell you what I will expect to have done. I am entitled to have the whole pamphlet put in as part of the Plaintiff's case.

**Mr. BREWSTER**—I know nothing but what is in the record.

**Mr. ARMSTRONG**—The Plaintiff states that this pamphlet was published by the Defendant, and that these passages complained of, are extracts from it. I submit that they are bound to put in the pamphlet as part of the Plaintiff's case, and for that proposition there is express authority in the case of Thornton versus Stephens before Lord Denman.

The **CHIEF JUSTICE**—I take it you may read to the Jury any part of the pamphlet you please.

**Mr. ARMSTRONG**—I know that, my Lord, but the point I submit is, that it should be given in evidence as part of the Plaintiff's case. The manner in which this case was opened I confess took me by surprise—I refer to the reading of selected passages without the context which would tend to explain or modify them.

The **CHIEF JUSTICE** asked the learned Counsel to cite the authority which he said sustained his proposition, observing that it was contrary to his recollection of the cases.

**Mr. ARMSTRONG** then cited the case of Thornton and Stephens (Moody and Robinson, page 25.) The alleged libel appeared in a newspaper, and contained a reference to another article in the same Journal. The Plaintiff was obliged to put it in evidence, and the Defendant was at liberty to refer to the entire contents of the paper, without offering any evidence of his own on the subject.

The **CHIEF JUSTICE**—Was there, in that case, a denial of the publication?

**Mr. ARMSTRONG**—I suppose it was the plea of the general issue, but it is all the same.

**Mr. BREWSTER**—In that case there was a plea of not guilty.

**Mr. ARMSTRONG**—I apprehend it makes not the slightest difference as to the principle. The present case is much stronger, as the pamphlet is the very thing from which the extracts complained of are taken.

The **CHIEF JUSTICE** said, the fact that in the case cited publication was denied made a material difference. The Plaintiff was necessarily obliged to give the newspaper in evidence, and the Defendant was then at liberty to use the entire of its contents as he pleased. Here the publication of the alleged libels was admitted, and the Plaintiff was not therefore com-

pelled to give any evidence on that subject. He could not yield to the application of the Defendant's Counsel.

His Lordship at the request of Mr. Armstrong took a note of the point.

Mr. CHARLES ROPER was then called, and having been sworn was examined by Mr. Macdonagh, Q.C. He said: "I am a magistrate, and a resident of the County of Dublin. I have known Lord Erne for several years. I do not know Mr. Porter.

Mr. MACDONAGH then read the first passage of the alleged libel, and asked the witness what he understood the meaning of it to be.

The CHIEF JUSTICE—This evidence is quite superfluous unless the party is described under general terms and no name mentioned.

Mr. MACDONAGH—Indeed I think so, my lord.

The CHIEF JUSTICE—I will put a stop to it.

Mr. ARMSTRONG—It is right to say that if they don't prove their innuendoes I will ask your lordship for a direction. They are not to be proved by the declamation of the Attorney General, but by evidence in the usual way.

Mr. MACDONAGH—Then I shall first ask the witness a question in reference to the second libellous passage. The learned counsel then read the paragraph relative to Lord Erne's swearing before a Parliamentary Committee, and asked the witness what was its meaning.

Mr. ROPER—I conceive that it imputed false statements to Lord Erne for interested motives and mean purposes.

The CHIEF JUSTICE again interposed, and said that this evidence was quite superfluous. The meaning of the alleged libel was to be collected from the ordinary meaning of the words, and not from any witnesses' view of them.

Counsel for the Plaintiff concurred in his lordship's opinion, and Mr. Roper left the witness chair. This closed the Plaintiff's case.

Mr. ARMSTRONG then renewed his application that he should be at liberty to read the pamphlet as part of the Plaintiff's case, and the Chief Justice again refusing, he asked his lordship to take a note of the application.

The CHIEF JUSTICE—I will take it from you as counsel, but otherwise I would be ashamed to have it on my notes. I will allow you to read any part of the pamphlet, but not as part of the Plaintiff's case

Mr. ARMSTRONG—I understand your lordship's ruling perfectly. I only wish you to take a note that we made the application.

The CHIEF JUSTICE having taken a note of the point,

Mr. ARMSTRONG then said, that the second and fourth issues were whether the libellous matters were printed and published in the defamatory sense in the Count alleged, and he humbly asked his lordship to direct the Jury to find a verdict for the Defendant on those issues, there being no proof to sustain the innuendoes. He wished his lordship, in taking a note of the point, to apply the objection to each and every one of the paragraphs complained of, no evidence having been given to prove the innuendoes as to any of them.

Some discussion took place between the Court and the counsel on the subject, and his lordship finally took a note of the point.

Mr. ALEXANDER PARKER (foreman of the Jury) said—If it would at all facilitate the decision of counsel in the matter, I have been placed at liberty to say that the Jury would not feel assisted by the expression of any opinions from the witness box as to the meaning of the language. (laughter.)

Mr. ARMSTRONG, Q.C., then rose and said—May it please your Lordship and gentlemen of the Jury, I have not forgotten the intimation made by your respected foreman of the impression made in your minds by the statement of the Attorney General. Do not misapprehend me, it is a perfectly proper intimation, and I am going to thank you for it. Having been subjected for an hour and a half to the thundering declamation of my right honorable friend, it is not at all to be wondered at, that you should have arrived in your own minds as to the meaning of the alleged libel at a conclusion favorable to the party who puts it forward on the record.

The FOREMAN—Mr. Armstrong, you misunderstand me. What I stated on behalf of the Jury was, that they thought they were capable of interpreting the true and proper meaning

of language according to common sense, without being enlightened by testimony from the witness box.

Mr. ARMSTRONG—I understand you right well, gentlemen.

The CHIEF JUSTICE—There was no intimation of opinion from the Jury one way or the other.

Mr ARMSTRONG—I did not misunderstand you, sir, in the least ; but you will at the same time bear in mind that it is quite impossible to suppose that the Attorney General's speech had nothing to do with bringing your minds to the conclusion at which you manifestly have arrived ; because there would be neither good sense in the intimation, nor could I understand it, unless I receive the intimation as indicating that you are favorable to the Plaintiff's view of this case.

CHIEF JUSTICE—I am bound to say on behalf of the jury, that the observation of their foreman does not mean that they have come to any conclusion.

The FOREMAN—You have rightly understood me, my Lord.

Mr. ARMSTRONG—Then I have the pleasure of addressing you with your minds quite open to hear the other side, and there never was a case in which it was more necessary than in the present that you should do so.

The CHIEF JUSTICE—I did not in the least understand the jury as giving the slightest intimation one way or the other.

SEVERAL JURORS—Not in the least, my Lord.

Mr. ARMSTRONG—There never was a case, gentlemen, in which it was more necessary that you should hear what really you have not heard at all, the facts which originated the case—the circumstances under which this publication went to the world, the origin of it, its drift, and its object. Now you heard the eloquent address of the Attorney General lauding the private, the public, and the religious character of Lord Erne. Gentlemen, I am instructed on behalf of my client to say that he never intended to make, and never did make, upon his public or private character for integrity or for honesty, or upon his religious character, the slightest assault or the least imputation. It is quite a mistake so to understand or represent the pamphlet. The Attorney General told you that the noble Plaintiff must have in this court the same measure of justice as any other man, and that he would ask for nothing more. That

is a very sound proposition to advance; but, gentlemen, I apprehend that if this were an ordinary case of an ordinary man in an humble rank of life, coming into this court complaining of a case of this sort, and if his case were opened in the way in which this has been opened on the part of the noble Plaintiff it would excite the greatest suspicion of any fairness in bringing it forward. In saying this I impute nothing to the noble Lord. The management of this case is committed to his professional advisers. This is an action of libel in which he complains of an attack on his character, and in which he asks a jury of his countrymen to compensate him for the injury that has been done to his feelings and his reputation. Now I make no observation on the circumstance that in this case, where the publication complained of is said to reflect on the character of his Lordship, he has not been produced. I am anxious that this case shall not be misunderstood on account of his not having come forward for himself. He shall therefore appear for the Defendant—not for the purpose of making the slightest attack on the noble Lord, but in order that his evidence—for he will tell us the truth—may cast light on the transactions involved, and explain the origin of this pamphlet, and how it came to be published. But just see what was done, for which I don't blame the noble Lord at all. I only say that it is a piece of management scarcely worthy of a case of libel in which there ought to be fairness and openness on both sides, and in which the jury are asked to give damages, although it is denied that it was a libel at all—that all the circumstances in connection with it that would go in mitigation of damages, should be studiously withheld. You have been several hours listening to this case. Do you know what the case is about yet? Do you see more than this, that there was some squabble between the noble Earl, the Plaintiff, and Mr. John Grey Vesey Porter, the Defendant, about the Dundalk and Enniskillen Railway? Is it not manifest that the words set out in this Plaint here are extracted from a publication of considerable length? If it is not manifest now it shall be. What they do is this: they take up the pamphlet, which if read in *extenso* would explain the whole matter to you—they select from different parts of it—sometimes skipping over

several pages at a time—everything that is harsh or unkind or capable, under the influence of a warm imagination, of being pressed into the service as being unkind or hurtful to the feelings of the Plaintiff, and carefully excluding everything that is innocent and explanatory—they string together everything of this kind and hash it up in the Plaint which is read to you by the Attorney-General, who guarded himself by saying that he would keep to the record ; and he sits down lauding the noble Earl for qualities which no man disputes his possession of—for virtues which we don't stand here to arraign or attack ; and he asks you to give heavy damages literally in the dark as to the truth and circumstances of the case.

Now, gentlemen, we have nothing in this case to suppress from you or to be afraid of. You are not men, I am sure, to be captivated by the last word from any speaker, however eminent, or any reasoner, however able. You will look to all the circumstances of the case opened to you on the part of the Defendant, and you will then say whether on the whole of the evidence it is a case in which Lord Erne has acted judiciously in inviting public discussion to it ; and whether under all the circumstances you will not exercise that undoubted right which the constitution confers upon you, and you alone, to declare that, taking everything into account, this pamphlet is not a libel ; and I am sure gentlemen there is no person in court who will more fully agree with me than the eminent judge I have the honor to address, in expressing my pleasure that he has been relieved from the necessity of deciding so important a question as that. It is a duty which the law casts exclusively on you. You will attend to the circumstance under which this pamphlet saw the light, and then you will judge manfully and independently for yourselves. The position of affairs some years ago was this. This Dundalk and Enniskillen Railway, it is notorious from whatever cause, has been deplorably mismanaged ; its shares are a drug in the market ; its shareholders have looked in vain for dividends. These are matters of notoriety that every man in the community is aware of. The object originally was to run a railway from Dundalk to the town of Enniskillen to be a feeder for several parts of the North Western district of Ireland, and to secure the Port of Dundalk, to afford a ready



exit to the other side of the agricultural produce of that great district. Soon after the original Act of Parliament was obtained for that purpose, it was found that without some aid from the Government it would be impossible, under the circumstances of the company and shareholders, to give effect to the project. Accordingly Lord Enniskillen convened a meeting in London of Peers and Irish Members of Parliament, and at that meeting, which was promoted by the Defendant here—

Mr. BREWSTER objected to any statement relative to the meeting in London. They were not there to enquire into the management of the Dundalk and Enniskillen Railway.

Mr. ARMSTRONG—I am going to show what these persons were differing about.

The CHIEF JUSTICE—You must not go out of the pamphlet.

Mr. ARMSTRONG—My Lord, I am not to take up the pamphlet nakedly and read it out to the Jury. They must have some little narrative introductory to the matter to show what the meaning of it was.

Mr. BREWSTER—I am extremely unwilling to interrupt counsel in the exercise of his discretion, but I only venture to call attention to the point as to whether we are to go at length into everything connected with this railway.

Mr. ARMSTRONG—I am not going to do any such thing as you speak of. I repeat that I am not to read out this pamphlet without note or comment; it would be a stupid thing to do, and I won't do it. I am at liberty to throw out some introductory remarks, in order to make the matter intelligible to you. Gentlemen, both of the parties in this case are men of high position. Lord Erne is the Lord Lieutenant of the County Fermanagh—my client is a Deputy Lieutenant. He and another gentleman were chosen to represent the County Fermanagh on the Board of Directors of the Company with the knowledge of the noble Earl. Very soon after Lord Roden ceased to be chairman, the noble Earl became chairman of the company, and a project was then started, to which Mr. Porter has always attributed the destruction of this line; and that was, that the noble Earl and the gentlemen who agreed with him, insisted, for some reasons of their own, that branch lines should be made to the main line before the main line was con-

structed itself. That was rather a startling proposition, but it is the fact. They had reasons of their own, and they insisted that under the circumstances of the company it would be a prudent thing to anticipate the making of the main line. It would be the same thing as if a tailor insisted on making the arms of a coat first, without minding the body of it at all.

Mr. Porter opposed that project from the outset. He opposed it as a gentleman by argument and reasoning ; but when he found his resolutions on the subject negatived and that his remonstrances were of no avail, he retired from the Board, continuing however to be a shareholder. He had the same interest in this project originally as the noble Earl had, both of them having 20 shares, though since that time Lord Erne has I believe become a proprietor to a larger extent. Mr. Porter is the son of a man of very high position in the country. He is a gentleman of large possessions and Deputy Lieutenant of the County Fermanagh, and in the daily intercourse of life was in the habit of meeting the noble Earl on terms of equality in a social point of view. These discussions were carried on between them certainly with warmth and energy, each putting forward his own views as strongly as he could ; but from first to last I assure you (and when you come to read the pamphlet I think you will agree with me) there never was an attempt to impute falsehood or corruption or perjury to Lord Erne. The utmost Mr. Porter meant to insist on was this, that whereas Lord Erne avowedly never attended to the financial affairs of the company, was much abroad, was a good deal in parliament and on the continent, yet he was too ready to take the representations of those officials whose business it is to attend to these details, and to give the sanction of his high name to statements which if he had made accurate enquiry he would find were not based on matters of fact. This company went before parliament on four different occasions to get acts to enable them to borrow money, and enable them to issue preference shares and so on. Matters being in this way a great deal of discussion took place, and though it may have amounted to recrimination it never descended to abuse ; and in the management of large commercial affairs of this sort, I can understand that gentlemen may differ and take strong

views and express themselves warmly, without one imputing to the other that he had been violating his duty, that he was a corrupt man, a hypocrite, a swindler, and everything disreputable, which you have heard the Attorney General say has been imputed to Lord Erne by my client. We utterly disclaim having made any imputations of that nature. The most we ever said of Lord Erne was this, that without knowing the details of the management of the line personally, he believed the representations of other people, and lent his aid to disseminate their statements. My client is no volunteer. He is a shareholder in the company; he had an interest in the subject matter; he had a right to discuss it, and so long as he does that without vilifying private character he is exercising a perfect right and is protected by law. We deny that in thus discussing the affairs of the company, as he had a right to do, he did not outstep the fair bounds of criticism, or impute corruption or falsehood to the Plaintiff. Indeed I am astonished under the circumstances that this case should be tried at all. My client never yielded in zeal to any man in promoting this line. He was most energetic in representing the interests of the County of Fermanagh, and strained every nerve to urge on the project. Self interest prompted him to do so, for the line passes through his own estate or an estate that will be his; but, gentlemen, as statesmen and politicians will differ, so to compare things comparatively little with great affairs, these gentlemen differed, and differed as gentlemen, on the question whether branches should precede or follow the making of the principal line, and Mr. Porter, who complains that these shares are not paying—that this line is the laughing-stock of Ireland, that while other companies are paying well this is a languishing, sickly, mismanaged line—doubtless felt very strongly when his advice was rejected, because he believed that if it had been taken the result would have been otherwise.

Gentlemen, I repeat I am astonished that this case is here after what happened. It is necessary that I should now tell you what occurred before this pamphlet was published, and why Mr. Porter felt it necessary to resort to this publication for the vindication of his character. After years of delay and difficulty the line was carried as far as Lisnaskea in the month

of June last. A public meeting took place on the occasion of the opening of the extension line to Lisnaskea ; it was attended by the rank and fashion of the neighbourhood, and by crowds of Lord Erne's tenantry. On that occasion the noble Earl thought fit (I don't wish to say anything harsh) in the presence of the assembled County of Fermanagh, and behind the back of Mr. Porter, to assail that gentleman in the unkindest manner, eliciting the applause of his own tenantry. He said that my client had retarded the completion of the line, and had struggled in Parliament and out of Parliament to defeat its progress towards Enniskillen. Gentlemen, it was in consequence of that extraordinary statement of the noble Earl, which I need not tell you soon reached Mr. Porter's ears, and which was the subject of discussion in the Grand Jury room, and buzzed all over the county—that only for Grey Porter the line would have reached Enniskillen—that my client published this pamphlet in vindication of his own conduct in reference to the line, and for the purpose, to use a vulgar expression, of putting the saddle on the right horse in the transaction. This pamphlet was published on the 18th of August, 1858. On the 28th or 31st of August the half-yearly meeting of the shareholders of the company took place. The pamphlet had acquired publicity, and was well known before the holding of that meeting, which was attended by Mr. Porter. Lord Erne was in the chair. At the conclusion of the meeting he was moved out of the chair and Mr. Porter moved into it ; and in proposing the vote of thanks to Lord Erne, Mr. Porter stated that notwithstanding any difference of opinion between them on matters of finance and management, he had pleasure in concurring in the vote of thanks to the noble Lord for his energetic conduct in promoting his own views. Lord Erne received that compliment, and the next thing we heard of was an Attorney's letter in a month afterwards threatening an action. The Attorney General told you the several ways in which a man may defend an action of this nature. He said that he might justify it—plead its truth. Let me dispose of that topic. If you attempt to justify a libel, you must justify it in the sense which the Plaintiff imputes—You could not justify it without adopting the Plaintiff's interpretation of the meaning. How could

we do that in the present case, when we never intended the sense imputed to the words complained of? Mr. Porter could not justify a thing that he never said, and never intended to say. The Attorney General said also that Mr. Porter might have pleaded that it was on a privileged occasion that he published this pamphlet. To this I give a similar reply. He could not plead privilege without admitting the truth of the innuendo: and therefore it would be absurd in us, to put in a plea of a privileged communication justifying language which we never used or intended in the sense imputed to it. I will tell you, gentlemen, what we could have done here as a matter of course. We could have denied the publication, and if we had denied it they would have been obliged to trace home the authorship of the pamphlet to Mr. Porter; they would have been obliged to put the pamphlet in evidence, and allow the whole of it to be read as part of their own case, and there would not be anything further necessary in the case than an address from me to you. But not descending to anything like subterfuge or falsehood, Mr. Porter admits the authorship and publication of the pamphlet, and sets up the only two defences open to an honourable and upright man—one of them being that he never used the language in the sense which the Plaintiff had ventured to put upon it, and another that it was not a libel for which a Jury ought to give any damages, or for which they ought to compensate the Plaintiff for his wounded feelings. We have come here fairly and openly; and upon the other side we have been treated to great management. I don't want to say anything harsh or unjust. It was no doubt perfectly open to them to string together, a number of passages which had no connection, and by placing them thus in juxtaposition, unexplained by the context, to poison your minds against the Defendant, and I suppose it may be justified under the name of "professional discretion." That was their discretion, but at the same time it is perfectly manifest that towards the gentleman upon whom it was sought to inflict damages nothing could be more unfair.

Of all cases that in which a Plaintiff comes into a Court of Justice to ask compensation for injury done to his character is one in which he is especially bound to come forward in a plain, honest, direct and straightforward manner. The Plain-

tiff here should have thrown down the pamphlet and said, "there is the matter about which I complain;" he should have come forward and told us that he understood the language in the sense imputed in the innuendoes, and he should have presented himself for the purpose of giving an explanation of the circumstances under which he brought this pamphlet on himself by an unkind attack on my client uttered behind his back—in a moment of exultation and excitement. Now, gentlemen, I proceed to call your attention to what you have not yet heard. This document was published on the 18th of August, 1858, and how is it headed? It is headed in a way which altogether gets rid of the various forced, extravagant and monstrous intents imputed to the passages which are said to be libellous. It is headed, "Lord Erne's *mistakes* as Chairman of the Dundalk and Enniskillen Railway Company, and their consequences to its shareholders, to the County Fermanagh, and to the Province of Ulster," by J. G. V. Porter. The preface is in these words, "As much discussion has taken place about the commercial failure of this Dundalk and Enniskillen Railway Company, I have put means together in these pages for every candid man to form a true opinion." Then there is a humorous dedication to Charles Dickens, in which he suggests to him to buy a share in the company and attend its half-yearly meetings, and that he would be able to get materials from them for a good story. The dedication concludes by assuring Mr. Dickens that he would derive both use and amusement from a Dundalk and Enniskillen railway meeting, where he would hear many statements only to be taken in a Pickwickian sense. He then gives an index to the contents of the pamphlet, specifying the several subjects of which it treats, namely, "Failure of the Directors' branches and immense loss to us by their attempts to make them;" "our present state and prospects;" "County Fermanagh interests;" "our best course now;" "Distances by different routes between Enniskillen and Liverpool, and Enniskillen and Dublin;" "J. G. V. P's letter in *Daily Express*, Feb. 26, 1858;" "A. J. Macrory's letter to J. G. V. P.;" "J. G. V. P's Answer;" "A list of our Acts of Parliament;" "Dates of openings on our line." I am sorry under the circumstances to have cast

upon me the duty of going through this pamphlet, but it must be done, for it is by the context that the true meaning is to be gathered. What situation were you in when I rose? You must have thought that this was a ridiculous and extraordinary pamphlet, containing all these paragraphs complained of, without any connection and full of strong observations. Now would it not have been a fairer and more rational thing to have read the pamphlet, and presented it fairly to you in order to show the relations of the parties and the light that the context would throw on these insinuations such as they are. However they had their reasons for the course they took; and the duty falls upon me of reading this pamphlet. I rejoice that this is to be done, that all the circumstances of the case will be fully explained, and that the whole of the context will be laid before you, which after all is the best guide to the meaning of the passages which are said to be defamatory in their character. The publication is addressed "to the shareholders of the Dundalk and Enniskillen Railway Company," and here is the opening passage. "As Time, the best test, has already proved the truth of the views which I laid before you in 1854 and '55, although opposed by the whole Board of Directors (i.e. who remained after the many resignations of men who like myself disapproved of their conduct), I therefore request with confidence your attention to a few words now which you will also find to be quite true." He then explains what his views were, and condemns strongly wasting the resources of the company in time, money, and credit in "Parliamentary lawsuits about branches which would be made over and over again on paper, in your engineer's plans and in your solicitor's bills of costs but never upon land."

The learned counsel then read a lengthened extract from the pamphlet in which Mr. Porter re-stated his arguments against the making of branch lines, and condemned the Directors for rushing into a parliamentary contest with other companies. Alluding to the statement of Lord Erne at the opening of the line to Lisnasken, Mr. Porter observes:—

"Again Lord Erne, our chairman, says that I am hostile to this Company (in which I have the same small number of original shares as himself, viz 20) because I have supported the

Clones branches, and opposed his Shantenagh branches ; I will therefore make his error quite plain and clear, and can allow for his annoyance at finding that the complete failure of his statements is now notorious over all Ireland."

Is it not plain from this passage that Mr. Porter never meant to impute falsehood or corruption to Lord Erne. He speaks of his *mistakes* ; he criticises, as he had a right to do, details of management which he disapproved of ; he refers to Lord Erne's attack upon him as being hostile to the company, and he says that in order to vindicate his own conduct in the matter he would make the error—he does not say the falsehood—of the noble lord quite plain and clear. Does not this show that his object in writing the pamphlet was a fair and legitimate one, and that he was not animated by any feeling of personal malignity towards the noble plaintiff. He says in another passage, "It is painful now to look at the fair offers then made to our directors and refused by them. But for their folly our main line would long since have been open to Enniskillen, and our shares would now without doubt be at par." It was folly and mistake—not corruption and fraud—that Mr. Porter imputed to the Board. He charged them with incompetent management of the company, but not with an immoral betrayal of the interests confided to their care. Having read several other passages from pages 3, 4, and 5 of the pamphlet, referring to projects suggested by Mr. Porter in 1854, to the law-suits into which the directors had dragged them, and speaking of the "public mischief of our directors' views" in regard to certain details of management, the learned Counsel came to the first paragraph complained of, commencing, "Still men often take different views of affairs, and are liable to mistakes ; let us therefore in charity suppose that Lord Erne and our directors had our interests at heart," &c. I deny (continued Mr. Armstrong) that this is a libel. On the contrary, the words contain an admission that the directors were sincere in their views though mistaken. No man can suppose that this was written in an ironical or sarcastic style. It means exactly what it says, and he proceeds to deal with these gentlemen on the charitable assumption that, though they had made mistakes, they were honest and sincere in their views.



If we can get a fair, reasonable, and inoffensive meaning for these words, we are not to have it forced upon us *volens volens* that we intended them in a libellous and defamatory sense. We say we never intended to cast an imputation on the character of Lord Erne, and on the other side they insist that we did. It is just like the Irishman at the fair eager for a fight and calling out "will nobody stand on my coat." Mr. Porter is not a man who would condescend to do anything mean or dishonorable. At the last half yearly meeting he would not have condescended to join in an expression of opinion that he did not think deserved—you will have no hesitation in thinking so when you see him on the table—and in joining on that occasion in a vote of thanks to the noble Lord he was perfectly candid and honest, and spoke as an independant and fearless man.

To say that after all this we shall put a forced construction on the language of this paragraph, is to say what is not reasonable or just. "Still men often take different views of affairs." What is the plain meaning of that? It is this—"I have put forward my views, but still I don't expect all to agree with me, and in charity let us assume that our Directors had our interests at heart." But then he says, "Why have improper means, improper patronage, and improper political influence been used to promote views that have failed, and with the most grievous injury to our property?" Now, with great respect to the noble Earl, I must say he has shown great chivalry in taking all this to himself. I find a number of Directors referred to, but Lord Erne is not named, nor is there anything in terms to connect Lord Erne with it. It means that, in the opinion of Mr. Porter, improper means and patronage were used to promote certain views; and it is for you to say how far there is anything libellous in that. Gentlemen, where men have a right to discuss matters at all we cannot be constantly weighing in golden scales every expression that falls from them, and you should not be asked to punish a man who, while he admits the other party to be acting honestly, still imputes the adoption of means that he thinks it was *improper* for them to use. It is a very mild and comparatively innocent expression; and men who choose to take part in public affairs ought not

to be so thin-skinned, and ready to take offence because they are charged with using improper means to promote their views, while at the same time it is admitted that their intentions were honest, and that they acted through mistake. Why, gentlemen, look at the discussion of great public questions. Look at the debates in Parliament at the present day as well as in times gone by. Look at the speeches of Pitt and Fox, and other illustrious men; and you will find the passage complained of here fade into perfect innocence in comparison with the imputations made by these men in discussing the great and important affairs of public life. These are the penalties which men pay who embark in public life; they must expose their conduct to open criticism, and must take these little rubs now and again. Mr. Porter then goes on to say, "Why has truth been disregarded in our Directors' statements?" He proceeds to tell you why, and in giving that explanation he absolutely and positively relieves Lord Erne from the imputation of falsehood or moral delinquency of any kind. It is a monstrous thing to have it insisted here that he has been abusing Lord Erne, and imputing to him that he is a depraved man, a hypocrite, and does not believe in religion or in a word that he utters. I must say that these observations of the Attorney General were far fetched, they were unjust, they were unnecessarily severe, but what is better, they were wholly unwarranted by the facts of the case, and there is not in the pamphlet one word to justify them.

Then he asks—"why did Lord Erne swear before Parliament in 1855 that our directors had then money enough to finish the line to Eniskillen and £60,000 over and above towards branches?" Observe it is put interrogatively. That Lord Erne fully believed what he stated before the Parliamentary Committee every one will concede to him. No one thinks that Lord Erne attended to give evidence that he did not believe to be true, and Mr. Porter only asks—why did he swear it? It may turn out that upon the faith of that statement a bill was passed. That Lord Erne believed it—that other persons believed it we cannot doubt, but Mr. Porter has always complained that if Lord Erne had sat down and discussed matters with him, looked at his statis-

tics and enquired carefully into the subject, he would have been satisfied that he was proceeding upon false data and an erroneous basis in representing that the Company would have a surplus of £60,000 after making the line. [Mr. Armstrong then read the continuation of the passage and proceeded.] What is the meaning of all that? You all know the distinction between that which is logically and ethically true, and logically and ethically false. Here there is no imputation that Lord Erne was guilty of moral impropriety, but it is stated that what he said as a matter of fact, being a matter of calculation to be arrived at by a reference to facts and figures, was not actually true, but there is no imputation that Lord Erne was aware of his error at the time. On the contrary Mr. Porter goes on to relieve him from the imputation of falsehood, for he says: "If Lord Erne meant shares and not money, if he meant that the unissued shares if sold at so much would make such and such a sum, and that the line if made at so much a mile would cost such and such a sum, and that 'if' all these 'ifs' turned out right, the first 'if' would give a balance of £60,000 over the second 'if,' why did he not say what he meant, and then, though only three years have shown that his calculation were altogether astray on both sides, he would not now be liable for blame—perhaps liable to a serious amount, for, as trustee making statements to get a branch act the truth of which he could have ascertained by proper enquiry, and which turn out to be quite wrong and of deep injury to us." I have to complain that this passage, which ought to have been placed in the first count, was put into the second. It was separated from the preceding sentence in the pamphlet which it qualified and explained. I ask you as reasonable men does not that very language itself exclude the intention of fastening intentional falsehood on the Earl of Erne? and yet notwithstanding it is stated that his "calculations" were wrong, and that if he made proper enquiry he would have arrived at a different result, nothing will satisfy the Plaintiff's Council but to construe it as meaning a charge of perjury. The true meaning is that he acted on a misconception in his calculations

and had not availed himself of the best materials for ascertaining the truth ; but not that he knowingly stated a falsehood, or was guilty of the slightest misrepresentation of an intentional nature. I submit to you that such is the true and natural meaning of the language ; and I would say that in charity to every one concerned, to the noble Plaintiff himself, there ought not to be a struggle here to fix upon the passage the far fetched and extravagant meaning imputed by the innuendo.

He goes on to say, which is not in the Plaint—" We often hear of Lord Erne's great wealth. Will he pay the difference between the market value of our shares now, and their probable value as a Jury would find, if our Directors had not refused the liberal Belfast offers in 1854."

[The learned Counsel next read the passage, " Observe what a serious view the law takes of statements of this kind, that disagreeable Act of Parliament for the punishment of fraudulent Trustees, &c."]

Now I utterly deny that there is in that passage any, the slightest intention of imputing that Lord Erne had escaped from being a misdemeanant under that Act, because the statement he made was not in writing. Mr. Porter was discussing a subject of great public interest—the representations made by the Directors of public companies. It occurred to his mind that there was this Act of Parliament, and he refers to it, but it would be throwing overboard all his previous declarations, that Lord Erne was mistaken and innocent of fraudulent intention, if he meant now that he was a malefactor who had escaped by a mere technicality. It is a cruel thing to endeavour to turn the passage into an imputation on him, that if his statement had been in writing he would be liable to a prosecution. Had not Mr. Porter already said that men took different views of affairs, and assumed that Lord Erne and the directors had the interests of the shareholders at heart ? Did he not in the preceding passages attribute to them mistake only ? Did any one ever hear of a Trustee being prosecuted for a mistake ; and that if a Trustee made a mistake, however honestly he may have acted, he would be liable to prosecution for it ?

You are asked to believe that he intended to stab the character of Lord Erne, notwithstanding that in express terms he had acquitted him of everything but not having acted with circumspection. It is a fact, that this has been a grossly mismanaged and most unfortunate line for the shareholders ; and cannot that be accounted for without imputing criminality to those connected with its affairs ; and that was the meaning of the pamphlet. The next passage which is said to be defamatory is that in which Mr. Porter expresses his concurrence in the general opinion that, in making certain statements, Lord Erne was only the dupe in matters which he did not understand. The Attorney General says that this is accusing his client of being a fool, a driveller, and an idiot. Gentlemen, I say, that in a discussion of this sort, having impeached Lord Erne's mode of management, it is quite within the scope of legitimate discussion to say, that he is the dupe of others whose word he takes. That is not a libel ; it would be ridiculous to say so ; and society could not go on if Juries are to be asked to find a verdict on such passages as this. How inconsistent is their own case, and how self-destructive the reasons which they advance to support the various parts of it. They first say that Mr. Porter charges Lord Erne with hypocrisy, dishonesty and falsehood ; and then they are obliged to change their tactics and say, " Oh ! now the imputation is that Lord Erne is a fool, that he is an idiot, that he is a miserable driveller." It means no such thing—there is not a word about miserable driveller in their own ridiculous innuendo ; but in this way an attempt is made to inflame your minds, and misrepresent the real meaning of my client's language. I would be ashamed to stand here as counsel for Mr. Porter, if I believed he were capable for one moment of imputing corruption and fraud to Lord Erne, or stating that he was a driveller, an idiot and a hypocrite in his devotions. A driveller and a hypocrite ! Good God ! what vocabulary was ransacked to find such epithets with a view to inflame your minds, and carry you away from the consideration of the truth ? If it was dangerous to write a book, as the learned counsel said, do you

not see, gentlemen, that it was ten times more dangerous to read it when written. The Attorney General indulges in the very harshest language he can find to make a lodgement in the minds of yourselves and of his Lordship, and leaves to us the task of going through this pamphlet, and wearying you by a detail of facts. It was a monstrous thing to hold out to you that my client represented Lord Erne as a magistrate dissembling justice—that was the word—and a hypocrite who preached what he did not practise—a whited wall, a miserable impostor. Where these ideas could have originated, save in the heated imagination of the eminent gentleman that addressed you, I am at a loss to conceive, for there is no foundation for them in this passage, but quite the contrary. He says that Lord Erne is the dupe of those whose word he takes: and I submit that that is fair discussion. It amounts to this: “you made statements which you thought were true, and you took other people’s words, and there is nothing either ridiculous or unworthy in believing them.” We all know by whom these accounts are prepared and representations made. You can’t expect a man in Lord Erne’s position to understand all these matters of business, particularly when he has declared over and over again that he did not affect to understand the financial part of the concern. Well then, gentlemen, he might, in making representations at half-yearly meetings, or giving evidence before Parliament, act upon the statements of others, believing them to be true, although they subsequently turned out to be unfounded, as the world knows. “I quite concur in the general opinion that Lord Erne is a dupe in these matters, but I am astonished that, in justice both to himself and to our interests, he does not enquire carefully into their truth beforehand, &c.” Can that be said to be overstepping the bounds of fair discussion. It may not be very polite to say of a man, that he is duped, but after all nothing base or discreditable is imputed to him.

“I am astonished,” (says Mr. Porter,) “that in justice to himself as well as to our interests, he does not, either inquire carefully into their truth beforehand, or else give

the authority on which he makes them ; for," and here is his reason for expressing this feeling—"they come with great weight on public meetings from a man who is often Chairman of Church Education and religious Societies, that no doubt have no special license to dispense with truth in railway matters of hundreds of thousands of pounds, which is so vigourously and justly preached in small matters of a few shillings at Church, at Petty Sessions, and between poor struggling men, tempted by hunger, pressed by distress, &c." Gentlemen, if this be a libel, it is the mildest and most diluted I ever heard of. What is the meaning of it? A poor man at Sessions will be pulled up if he commits a fraud upon another, and at Church we have the principles of morality inculcated on him. There is nothing to dispense with truth in greater matters. Lord Erne is a man of high character, and just because he does attend religious meetings, because he is known to be a pious, virtuous man—everything he says is looked upon as Gospel, and he ought to be cautious before he says it ; and then I am told that it means he is a whited wall, a depraved man, a canting hypocrite, a dissembler of justice—capable of dissembling justice between man and man. I must say it was a cruel thing to indulge in these observations, when a fair interpretation of the pamphlet would have shown that they were unjust ; but I will tell you the reason the pamphlet was not opened to you in the first instance. No Counsel—and no one possesses a higher reputation than my right honourable friend—would, if he had read the pamphlet through, have presumed to indulge in such observations as that—

The ATTORNEY GENERAL—That I distinctly deny.

Mr. ARMSTRONG—He denies that—be it so.

The ATTORNEY GENERAL—Distinctly.

Mr. ARMSTRONG—Very well. Now I will turn back and read the first paragraph of the alleged libel : " Still, men often take different views of affairs," and here, gentlemen, is an instance of it. I don't believe in the profession there is a more honorable man, as we all know there is no one more distinguished—than the Attorney General. I

take the liberty of differing from him in a certain view of what ought to be done in a particular case. I have only expressed my humble opinion, that he would not have gone the whole hog, and run such a muck upon us as he did if he had previously read the pamphlet. He says that he would have done so, and I am sure he does think he would. I differ with him as to the propriety of taking such a course, and we are all at liberty to take a different view of things.

CHIEF JUSTICE—It would be rather strange if you did not, being on opposite sides.

Mr. ARMSTRONG—Gentlemen, you are asked to put a hurtful construction on this passage, but we ask you not to do so. We say, Lord Erne is not a whited wall and a hypocrite, but he is a man of religious character, of high position, in the habit of attending religious meetings; and because he is a pious man, and an exemplary character, everything he says comes with immense weight before the public, and having the sanction of his high name, obtains immediate and universal credence. Mr. Porter, after some allusions to the "flattery" of Lord Erne by the Dundalk Directors, goes on to speak of his Lordship's conduct in respect to the branches, stating that the Directors forced them on the shareholders, and that they had even suspended the usual printed list of all shareholders, showing how many shares each man held, on purpose to prevent any combination of their majority against any branches made with preference shares. "Yet common prudence," he says, "should have made Lord Erne at the head of the Company, but not able to attend to its detailed management, require that every shareholder's opinion should have been fairly taken before a branch act was sought about which such difference existed. Lord Erne, with their own opinions to refer to, would then be free from blame. But in place of this conduct he assisted the solicitors in every way, in quashing and overwhelming the shareholders' wishes." Surely, gentlemen, you will not pronounce this to be a defamatory libel? Men are not, when discussing public questions, to be obliged to adjust their words so as to rob them of all energy, all force, and all point. If you are to



permit a man to speak freely of his own concerns at all, you cannot pronounce this passage to be one exceeding the fair bounds of discussion, and yet it is just as strong as any other portion of the pamphlet when rightly understood.

You have not heard yet what the recommendation of this pamphlet was. Having discussed the management of the line, pointed out the errors of the Directors, showed that if they had adopted a certain course their affairs would now be in a prosperous state, but that having rejected his advice, and acted contrary to it, they had damaged the condition of the Company, what advice does Mr. Porter give to the shareholders? He tells them that having regard to past mismanagement, they should no longer repose confidence, not in the honesty or integrity, but in the capacity of the Directors, and that the best thing they could do would be to sell their line to other great Railway Companies that might be willing to purchase it. That, gentlemen, is the real offence of this pamphlet. I have no doubt that Lord Erne was stung to the quick by the fact that Mr. Porter, who traces this line from its inception down to its present miserable condition, should wind up with a declaration that the shareholders should, in future, refuse to place confidence in his Lordship's management, and sell their line to other companies as quickly as possible. That is the key to the meaning of the whole of this pamphlet. Its drift was to show the shareholders that the wisest thing they could do was to get rid of their responsibility by selling the line; but at the same time Mr. Porter had a perfect right, having regard to the attack made on him by Lord Erne, to show that the blame was attributable not to him, but to those who had assailed him. Mr. Porter then goes on to say that their £10 preference shares were selling at a discount, and that the "prospect of monopoly, the sordid image for which our Directors spent so much substance, has already and altogether vanished from their grasp;" and after some observations, to show how this prospect of monopoly had been dissipated, he proceeds to the next chapter declared on by the Plaintiff, headed "County Fermanagh Interests." It commences—"the great loss to Fermanagh,

from Lord Erne's Railway *mistakes*"—will you read that as "*frauds*?" After some general observations on the subject the paragraph concludes with the following sentence, which it is alleged is of a libellous nature: "Is it not therefore a sad, perhaps an irreparable loss to this county, that besides these long delays, which once over might be forgotten, its main Railway will not be, though last, the best in Ireland, with the advantage of the experience acquired on earlier lines; but so closely run are the Company's means by their Directors' law-suits, disfigured by every exploded penny-wise-pound-foolish make-shift; though certainly our edifices at Lord Erne's village of Lisnaskea do not show any want of money." This means, according to the construction put upon it on the other side, that Lord Erne had conspired and confederated with the Solicitors and the Directors, in order to get a handsome station at Lisnaskea. It is impossible fairly to put that construction upon it. It may go the length of stating, that an unnecessarily good station has been erected there, to please Lord Erne; but the idea of stating that Mr. Porter meant that the noble Earl played into the Solicitors' hands, in order to get an extravagant station, and that the Solicitors played into his hands, in order that they might have heavy bills of costs for doing unnecessary work, is far-fetched and has no foundation in reality. It is one of those airy fictions existing only in the imagination of the pleader. The fact is this. Between Lisnaskea and Enniskillen there is a considerably large village called Lisbellaw, the property of Mr. Porter's father. According to the original plans, to which Lord Erne was a party, there was to be a station at this village. Afterwards, however, the Directors refused to put any station there, and the matter ended in an equity suit, a cause petition having been filed to oblige them to do so. They defended the suit, but failed, and Mr. Porter, in commenting on their ridiculous law-suits, complains of this one, and says, "Looking at the edifices at Lisnaskea, there would not seem to be any want of money; Lord Erne had not to file a cause petition to compel the erection of a station there; and yet, on the pretence that

there was a want of money, the Directors refused to place a station at Lisbellaw, and obliged the owner of that village to proceed in a court of equity, to enforce the performance of their compact." It is a perfectly innocent passage, and the idea of including it in an action for libel seems to me to be very ridiculous and absurd.

Mr. Porter then proceeds to say, that there were too many level crossings on the line, and to point out other matters connected with the management of which he disapproved, and winds up with advice to his brother shareholders—namely, to require a list of the common and preference shareholders, shewing the number of shares with each name, &c., to be printed and distributed before each half-yearly meeting—to appoint a committee of shareholders resident in Dublin, to take the sense of the shareholders on the propriety of selling the line to the Ulster Company and the Midland Company—and to take counsel's opinion as to whether, and if so, how, at any future time, they could reduce their interest on their preference shares. I turn over eight pages before I come to the next passage complained of, viz:—"It seems to me to be a common trick of directors, and a common error of shareholders, to make the solicitor the scape-goat for all the company's misdeeds. But if directors are independent, if one man does not want an extravagant station in his village, and another well paid places for needy relatives, and therefore bend to the solicitor's influence at the Board, he can do no harm, and the directors, who can dismiss him when they think fit, are therefore responsible for him while they keep him." It is necessary to tell you what Mr. Porter points to in this passage. On the 26th of February, 1858, a letter from Mr. Porter was published in the *Daily Express*, addressed to the shareholders of the Dundalk and Enniskillen Railway Company, and complaining that the directors had a bill before Parliament, to enable them to borrow £75,000 by preference shares, to complete the 25 miles from Newbliss to Enniskillen. "Your only prospect," he says to the shareholders, "is thus—No dividends; a bill every year before Parliament, and abundance of law suits." This elicited a

letter signed, "The Solicitors of the Company," and dated "Dublin, March 12th, 1858." In this letter the writers complained of the statements made by Mr. Porter in his communication to the *Daily Express*, and required him to retract them; they went on to explain the nature of the bill which they had before Parliament, and said that next year they proposed a similar bill to raise capital for the completion of the branch to Cavan, and for authority to make a branch from Ballybay to Monaghan, &c.

[The learned Counsel read the letters in *extenso*, which appear in pages 18, 19, and 20 of the Pamphlet.]

I am bound to tell you that Mr. Macrory disavows this letter, and says that it did not come from his office. At all events, Mr. Porter received it and believed it to have come from the solicitors, and replied to it on the 17th of March. He published the correspondence in the Pamphlet, and after the solicitors' letter in which they make a deliberate statement of their determination to bring in a couple of bills—we are preparing bills, we will go to Parliament, &c. He says, "This is a candid letter, requires no notes, and will speak for itself." He adds, "It seems to be a common trick of Directors and a common error of shareholders, to make the solicitor the scape-goat for all the company's misdeeds," &c. That paragraph goes in connection with the reference to the station at Lisnaskea. I think Mr. Porter had a perfect right to make the remark; and that the innuendo which imputes as its meaning that Lord Erne and Mr. Macrory played into one another's hands, for the perpetration of mutual jobs at the expense of the shareholders, is perfectly unfounded. Mr. Porter had no such meaning, and to suggest it is grossly insulting to Lord Erne. I have now gone through the whole of the alleged libels in this case, and I call on you, gentlemen, construing them fairly, and explaining them by the assistance of the context, to say that they were not libels, and were not published in the defamatory sense imputed to them. There can be no doubt that certain statements were made by Lord Erne, on the faith of which Parliament was induced to pass the company's bill. It is equally clear that these represen-

tions were in point of fact false ; because the company had to go several times to Parliament for new bills ; but it is also perfectly manifest that there was no intention on the part of my client to impute intentional falsehood to the noble Lord, or to impeach his character for integrity in the management of the company's affairs. I admit that this pamphlet assails the management for want of capacity, for mistakes, for defective judgment. The shareholders are cautioned against allowing the directors to continue to be the custodees of their interests, and are recommended to sell the line ; but it was foreign to the purpose of Mr. Porter to insinuate anything beyond a want of skilfulness in the management. You will look at this case, gentlemen, with the eyes of men of the world.

In the first place, I ask you confidently do you think this case was fairly ushered into court ? I do not say that my learned friends had not a right to exercise their discretion ; but I must say that there was a great deal of skilfulness displayed unworthy of the cause. The Plaintiff, in an action of this sort, ought to act openly, and conceal nothing ; and I think common fair play would have suggested that the whole of this pamphlet should have been opened to you, its drift and object explained, and that you should not have been left entirely in the dark as to its scope and purpose ; and that a number of extracts, some of them several pages distant from one another, should not have been strung ingeniously together, for the purpose of creating a false impression in your minds. I do not say that the noble plaintiff is answerable for this management ; it may have been altogether the independent act of his professional advisers, which of course they had a right to do ; but, at the same time, do you think it was the proper way to open an action for libel, in which it is sought to mulct a gentleman in damages ? I respectfully submit that it was not ; and if I had chosen, instead of going into evidence merely, to address you upon the passages complained of, and that you had found a verdict upon them, Lord Erne would, by the management of his counsel, be placed in a most laughable and ridiculous position.

The CHIEF JUSTICE—I don't think he would.

Mr. ARMSTRONG—However, gentlemen, the case is now fully before you, and it is for you to say whether, upon the whole of the facts, the Plaintiff is entitled to your verdict. You perceive, from what I have read to you, that Mr. Porter complained that, in opposition to his predictions and advice, Lord Erne and some of the other directors insisted on making branches before the main line was finished. There was a considerable difference of opinion on the subject, but you will agree with me that it was a matter which men might freely discuss without imputing motives on either side. These branches could not be made without raising funds, and one of the plans proposed was, to issue preference shares, the interest on which must be paid before the original shareholders would get a penny of dividend. Mr. Porter declares that he looked upon the interests of the original shareholders as paramount to every other consideration, and he therefore struggled against the branch lines, because he thought, for the reasons which he stated, that they would destroy the property of the original shareholders. He had stated these views at every half-yearly meeting, in numerous letters which were published in the newspapers. His opinions were perfectly well known to Lord Erne. His reasons may have been conclusive; they may have been inconclusive; they may have been such as ought to have satisfied Lord Erne; or such as that Lord Erne may have been justified in treating them with derision, as he did. He may have thought that Mr. Porter took an erroneous view of the subject; but at all events he had as much right to hold and express his opinions as the noble Lord; and in this state of affairs was it not a cruel thing, that at the meeting, in the nature of a congratulatory assembly, at Lisnaskea, on the occasion of the opening of the line to that place, Lord Erne should have thought proper to attack him as having been the person who was answerable for retarding the completion of the line?

The CHIEF JUSTICE—Mr. Armstrong, this is not a case of *son assault demesne*.

Mr. ARMSTRONG—No, my Lord, but the circumstances

of provocation are always proper matters to be referred to, as explanatory of the origin of the publication complained of. Don't suppose that I am about to apologise for the pamphlet—I will not apologise for a word of it. That would be inconsistent with the view which we take of this case. We say he had a right to publish the pamphlet. He was interested in the company, and had a right to discuss its affairs, and his object in this publication was to point out the errors of the management. It amounts to this : Lord Erne and the Directors have betched your affairs ; they will continue to do so, unless you sell your line to some other company, and get rid of it altogether. He had a right to urge that advice on his brother shareholders, and to justify it, he points out the particulars in which he thinks the Directors have erred. He says erroneous statements were made in Parliament and elsewhere. The gentleman who made them may have been liable to mistake—he may have taken views different from mine, but time, which is the best test of truth, proves that I was right, that my predictions have been verified, and that the reasoning by which my views was opposed was unfounded and mistaken.

This being so and the management being substantially now what it was then, I caution you not to rely on statements, however positively made, of parties who were before mistaken, but to act as you would in any other concern of life—not to trust the party who misled you however honestly, but sell your line in order to make something of it before it is further injured by mismanagement. I submit to you, Gentlemen, that the observations complained of do not impute a want of integrity to Lord Erne. Mr. Porter speaks of Lord Erne's "mistakes"—he argues on the hypothesis that he had the interests of the shareholders at heart—that he was honest and sincere in his intentions, but was mistaken—and he says he agrees with many persons in thinking that Lord Erne is the dupe of other parties in matters which he did not understand. The idea that he was representing the noble Earl as a drivelling idiot, a man of no common sense, is perfectly idle ; but it is also utterly inconsistent with the suggestion that he was imput-

ing anything knavish to him. That is out of the question. It would be easy to make an imputation of fraud and of guilty connivance with the Solicitor; but I find nothing of the sort in the passages complained of, but on the contrary, it is expressly excluded by the context, and the view taken throughout of Lord Erne's conduct is that he was mistaken and acted in various instances on erroneous information. Again, Gentlemen, I repudiate on the part of my client any intention of impeaching Lord Erne's character for honor or integrity, and I insist that his language fairly interpreted, does not bear that meaning. The idea of imputing to him that he was a hypocrite in the habit of attending religious meetings and of preaching what he did not practise, never occurred to Mr. Porter's mind; and the obvious and fair meaning of the passage upon which that forced and unnatural construction is sought to be put is simply this—that just because he is a man of religious character and believed by his countrymen to be a man of truthfulness and honor, everything stated by him had great weight with the public, and therefore that he ought to exercise the greatest caution and circumspection in the representations that he made. I hope, Gentlemen, you will be relieved before the case is over from the necessity of considering the question of damages. I don't think it ought to result in any event in damages at all. I think you will be of opinion that the passages complained of as explained and modified by the drift of the pamphlet and the nature of the context are not of a libellous character, and that an attempt was made in the outset by holding back the context to lead you to a false conclusion; but undoubtedly, Gentlemen, if upon attentively considering the whole of the case you should feel yourselves coerced to think that Lord Erne is entitled to any consideration at your hands, I ask you to bear in mind, (what juries always do in cases of this nature,) the circumstances under which the pamphlet was published—the interest which the Defendant had in the Company—and the right which he had to protect himself from a very serious aspersion—one calculated to do him irreparable damage in the County of Fermanagh, by holding him up to the pro-



prietors and people of that county, as the person who had retarded the completion of the railway in which they were all so deeply interested. I think, Gentlemen, however, that the rational and proper termination of this case would be a verdict announcing, that although there was here a free discussion and a candid statement of the opinions of my client, there was nothing which in this free country and in the exercise of his right to discuss matters of a *quasi* popular and national character, can be considered as transcending the limits of fair discussion, and the use of fair argument—nothing to disentitle my client to be considered by you as a person who pursuing his own rights and advocating his own views has done so strenuously, energetically, and warmly, but at the same time without any intent to defame private character, or seeking to inflict the slightest stab on the reputation of any man for integrity and piety.

Mr. J. G. V. PORTER was then examined by Mr. Lawson, Q.C. I am the Defendant in this case. I have been a Shareholder in the Dundalk and Enniskillen Railway from the beginning. [The pamphlet handed to witness.] This pamphlet was published by me; my name is on the title-page of it. The first edition was published on the 18th of August, 1858.

Mr. LAWSON—Do you know Lord Erne?

Mr. PORTER—Yes—I have known him as long as I live, I believe.

Mr. LAWSON—Have you been on terms of personal friendship and intercourse with him?

Mr. PORTER—I was on terms of friendship with Lord Erne, and we had great intercourse about this railway; and I believe he had perfect confidence in me about it until we differed about these branches.

Mr. LAWSON—Then you did differ with Lord Erne about these branches?

The ATTORNEY GENERAL—I object to any evidence being given as to the details of differences between the witness and Lord Erne about this railway.

Mr. LAWSON—I am not going into the details of the differences.

The CHIEF JUSTICE—I rarely interpose with a suggestion in a case of this kind ; but after the answers of Mr. Porter to the questions put to him, I would say that, taking into consideration the former terms of intimacy between him and the Plaintiff, and the utter disclaimer by his Counsel of imputing anything to Lord Erne but a mistake, I confess I think that it is a great pity that the noble Earl and this respectable gentleman should not be on the terms on which gentlemen ought to be, though they may differ materially on public subjects. I felt, therefore, that I ought not to omit the opportunity of being instrumental in bringing about what I recommend and desire. I do not mean to say that there may not be passages in the pamphlet, which Mr. Porter, upon calm reflection, would be very glad, indeed, were different, at least in their tone, and in what may be considered their insinuation ; but all that I take to be at an end, for it is disclaimed ; and Mr. Porter, I presume, will have no difficulty in saying himself what his counsel has said.

WITNESS—My Lord, neither in this pamphlet, nor on any occasion whatever, have I ever attributed corrupt conduct to Lord Erne. I allow them the greatest latitude in bringing forward against me, if they can, any single occasion, either in public or in private life, of my having done so. I only attributed mistakes to him, and I wrote this pamphlet on that foundation.

The ATTORNEY GENERAL—Unless my ears deceived me, I heard Mr. Armstrong state to the Jury, in the most emphatic manner, that he would make no apology for the pamphlet, or for a single word in the pamphlet.

Mr. ARMSTRONG—That was while disclaiming the meaning imputed to it.

The ATTORNEY GENERAL—The moment that was said I felt—although I am inclined to yield to the slightest suggestion that comes from your Lordship—that it lies upon Mr. Porter and his counsel to make the movement, if any, and to make a proper amend—not by saying that no apology would be made for the pamphlet, but by a very different course of proceeding.

**Mr. ARMSTRONG**—That observation was made *arguendo*, and for the purpose of insisting on my right to deny the intent and meaning imputed to the pamphlet.

**Mr. BREWSTER**—The Defendant's Counsel coming here to justify his client, winds up by saying, "Don't suppose we mean to apologize for the pamphlet, or a word in it; we stand upon our rights." Now, if Mr. Porter stands upon his right to publish such matters of Lord Erne, I, for one, must have the opinion of the Jury, whether he has that right.

**Mr. ARMSTRONG**—What I said was, that it would be inconsistent with my defence to apologize for a pamphlet which I was instructed to deny bore the meaning imputed to it; but I did not say this by way of challenge, or for the purpose of keeping up discussion. Over and over again I stated and manifested my anxious desire for an accommodation of this matter, knowing very well that nothing was more foreign from the mind of my client than to impute anything improper or dishonourable to the Plaintiff.

**The ATTORNEY GENERAL**—Then why say what bore that construction?

**Mr. ARMSTRONG**—I am surprised that there should be an attempt to fasten this upon me. I now take on myself the responsibility of withdrawing that expression. It was an observation to the Jury inconsistent with the general tenor of my address.

**Mr. BREWSTER**—I don't wish to fasten upon the expression. Nothing would give me greater satisfaction, having a strong feeling for Lord Erne, and no ill feeling towards Mr. Porter, if this case had been put forward in the view you suggest. The case has now taken such a turn, that it strikes me as indispensably necessary—after the suggestion that has fallen from the bench—that whatever action is taken should be a direct action coming from the Defendant through his counsel, in such a way as the public can understand, to place Lord Erne in a position that I think, circumstanced as the case now is, Lord Erne ought to stand. If such a proposition were made in a proper spirit, I, for one, would be sorry to have the responsi-

bility of doing anything inconsistent with the well-considered expression of your Lordship's opinion. But if that be not done, having, as I conceive, the honor of Lord Erne in my hands, I must altogether decline anything but the regular ending of the case. My learned friends know perfectly well how to adopt any suggestion coming from your Lordship. We must now hear from them if they mean to do anything.

**THE CHIEF JUSTICE**—I would never have suggested an adjustment of this on any other terms than a disclaimer of intentions to impute improper conduct to Lord Erne, and a ready willingness on the part of Mr. Porter, to express his regret for anything in the pamphlet that might be calculated to hurt the feelings of Lord Erne.

**MR. BREWSTER**—I know that your Lordship would not make the suggestion in any other sense. I feel all the weight that is due to any observation coming from your Lordship, but there is also something due to those whose honor I am bound to protect.

**THE CHIEF JUSTICE**—And I hope I have not overlooked that.

**MR. PORTER** then left the witness chair, and entered into conversation with his counsel and attorney, who communicated with the counsel and attorney at the other side. They could not, however, agree to terms, and Mr. Porter again resumed his seat in the witness chair.

**MR. ARMSTRONG** then rose, and was about to make a statement to the court.

**THE ATTORNEY-GENERAL**—I object to Mr. Armstrong saying anything now, as to what has occurred between us. we have made a proposal—I don't say that he is not perfectly right in refusing it—but he has done so.

**MR. ARMSTRONG**—We have made a proposal also.

**THE CHIEF JUSTICE**—I am sorry you cannot agree.

**MR. ARMSTRONG**—Justice demands that the terms should be known.

**THE ATTORNEY-GENERAL**—Certainly not, and if Mr. Armstrong persists in stating to the court the terms that were proposed, I will not allow the case to be compromised.

Mr. ARMSTRONG—I am not going to state a word of it, without the permission of the court.

The ATTORNEY-GENERAL—We acted on his Lordship's suggestion.

Mr. ARMSTRONG—I will say that we acted on it to the fullest extent.

Mr. BREWSTER—And we did not agree. Proceed with your case.

Mr. PORTER—It is very hard on me that the terms should not be known.

The ATTORNEY-GENERAL—You have no right to state that.

Mr. PORTER's examination was then resumed. He was asked whether the letter dated February 26th, 1858, and published in the *Daily Express*, had been written by him, but the question was objected to and overruled. The witness stated that he knew Mr. Macrory, the solicitor to the company, and that he had received a letter purporting to come from his office. The letter was at the Bilton Hotel.

[Further evidence on this subject was objected to, and the objection allowed, because of the non-production of the letter.]

Mr. LAWSON then read the first passage complained of, and asked the witness what he meant by that sentence?

The CHIEF JUSTICE—I cannot permit that question, it is quite improper. He can only be asked to prove what might be proved by an independent witness.

Mr. LAWSON then read the innuendo to the passage in question, and asked whether it truly expressed the meaning.

The ATTORNEY-GENERAL objected to the question.

The CHIEF JUSTICE said he never heard of such a question being asked. If the libel were covert, or ambiguous, a witness might be asked what he understood by it.

Mr. ARMSTRONG—We submit that it is ambiguous, and that we have a right to shew the meaning of it.

The ATTORNEY-GENERAL—If the question is not what this gentleman intended, but what is the meaning of the words, however puerile that question may be, we submit that it might be better for us to allow it to be put.

Mr. LAWSON—I propose to read from the summons and plaint, the meaning put on the passage, and ask Mr. Porter is that the meaning of it.

Mr. MACDONOGH—We object to that on the ground that it is a leading question.

The CHIEF JUSTICE—I will allow the question to be put in any way the Plaintiff's counsel please ; but I never heard of such a thing as bringing a witness up to prove the meaning of the English language.

Mr. LAWSON—I respectfully ask your Lordship to take a note of the question I am about to ask. I ask him is this the meaning—“that the Plaintiff, the Chairman, and others, who were directors of the said Dundalk and Enniskillen Railway Company, however charitably it might be supposed that the Plaintiff so being director and chairman, and said other persons, so being directors of said company, had the interest of the shareholders of the said company at heart, yet that said Plaintiff, the chairman, and said directors of said company, had used improper means, improper patronage, and improper political influence, to promote views which had failed, and had thereby caused grievous inquiry to the property of the shareholders?”

The CHIEF JUSTICE took a note of the question.

Mr. BREWSTER—Our objection is, that he is now asking a leading question, admitting that, we think he is at liberty to ask the witness the meaning of the language.

Mr. LAWSON—I now propose to ask Mr. Porter, whether the meaning of the words, “ Why did Lord Erne swear,” &c. is an imputation of perjury on Lord Erne.

The ATTORNEY-GENERAL—I have no objection to your asking the meaning of the words.

Mr. LAWSON—Well, Mr. Porter, what is the meaning of that passage?

Mr. PORTER—I think the words explain themselves.

The CHIEF JUSTICE—That is a very rational answer.

Mr. LAWSON—What is the true meaning in your opinion of the words?

Mr. PORTER—I don't rightly understand the question ; but I was present when Lord Erne—

The ATTORNEY-GENERAL—I object to your stating anything about this.

Mr. PORTER—I will state the meaning truly ; I am here charged as a libeller—and I beg that I may be allowed to state it fairly—I have answered that as to the mere English meaning of the words, I thought that they explained themselves, but if I am permitted to state why I put them in, I will.

The ATTORNEY-GENERAL—I cannot permit this.

Mr. LAWSON—Without reference to why you put in, what is the fair interpretation of the passage?

Mr. PORTER—It alludes to what I believe to have been a great mistake.

The ATTORNEY-GENERAL again objected, and

The CHIEF JUSTICE said he was sorry he allowed counsel to indulge in this line of examination. He saw what it would lead to, and he was confirmed in his own view.

After some some discussion, the Chief Justice took a note of the two forms of question asked by Mr. Lawson, first, what was the meaning of the passages complained of ; and next, whether the defamatory sense imputed in the innuendoes, was the true meaning. The Plaintiff's counsel did not object to the first question, but objected to the second, as being put in a leading form.

Examination of Mr. Porter resumed—I was at the half-yearly meeting, on the 28th of August last. When Lord Erne left the chair at the conclusion of the proceedings, I was moved to the second chair.

Mr. FITZGIBBON objected to these questions as being impertinent to the issue.

Mr. LAWSON—I propose to ask, did you, in Lord Erne's presence, when you were moved unto the second chair, put a vote of thanks to Lord Erne? [This question was objected to and overruled, the Chief Justice taking a note of it.]

Cross-examined by the Attorney-General—I think about 250 numbers were published of the first edition of the pamphlet. I directed the publisher to send eight or ten copies of it to different public places. There were two editions published.

At this stage of the proceedings, the Court adjourned to the next day.

*Monday, February 14th.*

The hearing of this case was resumed at the sitting of the court. The first witness called was

LORD ERNE, who was examined by Mr. Sullivan, Q.C.—I am Plaintiff in this action, and have been Chairman of the Dundalk and Enniskillen Railway Company for about seven or eight years. I remember the day the railway was completed as far as Lisnaskea. I attended that day myself. There was an inaugural meeting, at which I attended, with my family and relatives, and the whole country round, I may say. Mr. Porter was at the precincts of the meeting, but I did not see him at the meeting. I made a speech on that occasion, and alluded to him.

Did you say, “We have had to contend with opposition, partly from rival companies, and partly, I am sorry to add, from a gentleman of this county; and one residing not five miles distant from this spot has opposed it in Parliament and out of Parliament, and I understand is now writing in the papers to try and damage the credit of this line in every way in his power?”—Yes; I said that to the best of my recollection, and I alluded to Mr. Porter. That was about the 28th of June, 1858.

Did you say, “However, I have a good share of the old Fermanagh blood running in my veins, and I am glad the same spirit pervades all the members of the board. Our motto is, ‘No surrender,’ and we will fight the good fight until we link the rails of the Dundalk and Enniskillen railway with the Derry line?”—Yes; I said that, to the best of my recollection.

Mr. BREWSTER said that he could have prevented those questions being put, but did not object to them.

Examination continued—There were differences between Mr. Porter and myself as to the mode in which the line should be carried out. Some years ago we were on friendly terms, but latterly I was obliged to pass him by as a stranger, from the line of conduct he took, not only in the pamphlet, but in letters in the different papers, and also in



handbills, which he sent round the country, all very much with the same tenor as that last pamphlet, that I was obliged to take a hold of as the only means of stopping him. There was a pile of letters that high. The differences of opinion between defendant and myself were almost on every subject connected with the railway, and outside it too. One point of difference was as to branch lines. Our original prospectus stated that the main line should first be finished, and the board wanted to complete it, but the defendant was anxious for the branch lines. He joined the West of Ireland people in opposition to the completion of our line in the first instance. He and the West of Ireland Company were forcing us to make the branches. Our board were anxious to finish the main line first. I recollect the last half-yearly meeting. Mr. Porter attended it.

Was a vote of thanks moved to your Lordship on that occasion?

Yes; it was put by Mr. Porter, as second chairman. Mr. Porter expressed himself in favour of that vote of thanks, and next day he denied it in the newspaper. I heard that he qualified it. [Handed a newspaper.] This is the denial referred to. It was a formal vote of thanks to the chairman, "for his dignified conduct in the chair," or something of that sort. I do not recollect the words Mr. Porter used. It was a formal matter.

Mr. SULLIVAN read Defendant's letter published in the papers, stating that, in the resolutions of the meeting advertised, the vote of thanks was untruly stated to have been for Lord Erne's "explanations, as well as for his great trouble about the affairs of the company," and adding, that the vote had been strictly confined to the latter claim, in which he (Mr. Porter) had been most happy to join.

Examination continued—I say that Mr. Porter qualified his statement.

Cross-examined by Mr. BREWSTER, Q.C.—This is the original prospectus. [Handed in.] I have very nearly £100,000 at stake in the railway. The line was opened to-day to Enniskillen. Please God, I will open it publicly tomorrow. There has not been one yard of a branch line made yet.

Re-examined—About £20,000 were spent in getting bills to enable our line to make the branches, and not the West of Ireland Company. The original shares were £50 each, reduced to £30 subsequently. There are none for sale now, that I know of. I have very few original shares. They are nearly all preference shares.

To Mr. BREWSTER—Mr. Porter was one of our opponents in Parliament when the costs were incurred.

Mr. LAWSON, Q. C. then said—Gentlemen of the Jury, it now becomes my duty to address a few observations to you on the part of the defendant, and they shall be as brief as the nature of the case will allow. Gentlemen, I sincerely regret that it has become my duty to address those observations to you, because I did hope at one period of this case that it would have terminated in a way in which every one who has heard it must have desired that it should terminate. That however not being the case, and inasmuch as I shall be followed by one of the most powerful advocates that ever stood at any bar, who will endeavour to follow up the line so powerfully opened by the Attorney General to impress your minds with the idea that an enormous libel has in this case been written by Mr. Porter on Lord Erne the plaintiff, it must be my duty to endeavour to address your reason on the matter; and I ask you to discard any observations of mine which are not addressed to, and which do not carry home conviction to that reason. And, gentlemen, I think my first duty standing here—and it is a duty which I discharge both in obedience to my instructions and in accordance with the dictates of my own feeling—is whatever may be the result of this case (and I say this without in the slightest degree desiring to influence your calm and dispassionate judgment when you come to exercise it)—that duty is to disclaim on the part of my client any intention to deal with Lord Erne in any character than as a director of this railway; and as his Lordship has already thrown out to you that will be the question you will have to try—were the acts of Lord Erne which have been arraigned by Mr. Porter, his acts as a director of this railway; and has Mr. Porter—

who had a perfect right to discuss the conduct of the directors fully and freely—transgressed the fair limits of criticism? If he has not he is entitled to your verdict. If he has you must give a verdict against him, and before you apply your minds to the issue you have to try in this case, let me call your attention to the relation which it is now confessed subsisted between these parties. You probably were at a loss to understand the play of *Nisi Prius* that took place here. You must have thought it a singular circumstance that the eloquence of the Attorney General was fettered by the line he took for the Plaintiff—that is, that instead of taking up the pamphlet, and telling you its whole bearing and meaning, and endeavouring to make out from the context that the passages complained of were capable of bearing the meaning with the pleader gave to them, he for the purpose of getting the advantage of the last word, merely read the bald, disjointed, disconnected passages from the record asking you to put a defamatory meaning on them, while he himself was withdrawing from you the materials which would enable you to arrive at a just conclusion. How different has been the course we have adopted? They point to passages extracted from a long pamphlet and ask you to declare them to be libellous. We put the whole pamphlet into your hands and ask you to find your verdict upon it. Gentlemen, they were entitled to do that in point of law, and they have got the inestimable advantage that you will retire into your Jury room, with the powerful statement of my friend Mr. Brewster, who will comment on the passages complained of in some such terms as were used by the Attorney-General in his opening speech, ringing in your ears. I know the full value of the advantage which the Plaintiff has thus acquired, and never could such advantage be made more of than it will on the present occasion. I also know how difficult it will be for me to endeavour to pre-occupy your minds, and to guard you against having your passions and prejudices excited by the misconstructions that will be put upon this pamphlet in reply.

Gentlemen, I ask what has been our conduct in this case? Have we endeavoured to present a partial view of this

case to you, and really in judging of motives of parties it is of great importance to see how they have conducted themselves in Court. Far be it from me to throw any imputation on the noble Lord, because of the way in which his case was managed. The responsibility of that rests upon his professional advisers. No observation from me shall reflect on the character or conduct of the noble Lord. My client has not instructed me to do so, and it would be contrary to my own feeling and instinct. I believe, and my client believes, that the noble Lord has never done anything on any single occasion to stain his honor or character, or sully the high descent which he boasts. I have always heard that the noble Lord possesses that high and honorable character, which his Counsel claims for him, and which I have no wish to detract from. Gentlemen, I give him the full meed of praise to which he is entitled; but my case is, that my client has criticized his conduct in one character only, as a Director of this Company, that he had a right to arraign them in that character, and that he has not transcended, in that respect, the just limits of criticism. This has been magnified into a great case, the Attorney-General being brought in to state it, and my learned and able friend, Mr. Brewster, retained to reply; and really, when properly viewed, it is a very trifling matter after all. We all know how railway wars take place, and what is this, gentlemen, but a battle of branches and of trunks. Lord Erne had certain notions about the management of the railway; he thought that he ought to get Acts of Parliament for the making of branches. Mr. Porter, on the contrary, had an idea that the proper thing to do was to make their main line, and not spend any money in the making of branches until the main line was a paying concern. That question might be discussed between gentlemen without giving rise to anything to make a state prosecution of. The fact that Mr. Porter discussed the management of this line, and suggested, that if a different course had been adopted it would have proved more successful than it has been, is a matter of very trifling moment to the public, and you will have very little difficulty in saying, that

whatever this case may be, it is totally devoid of the elements that compose a public or a private libel. Before we canvas this pamphlet let us see the relation in which these parties stand ; because you will be asked on the part of the Plaintiff to find, that in this pamphlet, by a merely colorable attack on the management of the railway, Mr. Porter indulged in a feeling of personal malignity towards the noble Lord. Is there a scintilla of evidence in the case to lead you to the supposition that any such feeling existed in the breast of Mr. Porter? He himself disclaimed it. He told you he was on terms of personal friendship with, and entertained a feeling of high deference and respect towards the noble Lord ; and I will show you that he expresses it in this very pamphlet ; but if he were actuated by any feeling of malice to be proved out of this pamphlet, or if on any other occasion he had expressed malice against the Plaintiff, it was very easy to prove it. We put Mr. Porter on the the table and subjected him to a cross-examination, in which everything of that kind, if it existed, could have been elicited ; and do you believe, gentlemen, that if Mr. Porter had ever published any document bearing the semblance even of a libel, that it would not have been put into his hands to indicate the existence of an animus in his breast which he was only carrying out by this pamphlet.

Lord Erne has volunteered a statement, that Mr. Porter had previously published letters and placards in reference to this railway, and that he could not stop these discussions without bringing this action. I tell you, Gentlemen, that is the key to the present action. It is to stop the discussion of the affairs of this Railway, and it is not to vindicate the private character of Lord Erne, which never was assailed, that this proceeding was taken ; and if you are prepared by the sanction of your verdict to set your seal on that, do so— if you are prepared to say we will strangle the discussion of the affairs of this Company, you will do so ; but I repeat, that if what Lord Erne meant to convey to you about these placards was correct, and that they contained anything like a libel, you would have had them in evidence for the

purpose of showing malice in the mind of Mr. Porter. Am I doing too much then in asking you to assume that if they were produced they would be found to be strictly confined to what this pamphlet was intended to be confined to—namely, the discussion of the management of the Dundalk and Enniskillen Railway, and of the conduct of Lord Erne in his capacity of Chairman of that Company. It would be a strange thing indeed that a gentleman in Mr. Porter's position, living in the same county with Lord Erne, with whom he had been on terms of friendship, would wantonly rush into print and without a motive for it malign the personal character of the noble Earl. I quite understand that he has continually called the attention of the shareholders to his views with respect to the management of the line, and continually pointed out the mistakes which he believed the directors were making; but that in addition he would sit down and pen a libel reflecting on the character of Lord Erne, without any motive to induce him so to do, is a conclusion you must be slow in coming to when you see the relation in which these parties stood before the pamphlet was published at all.

In order to arrive at the meaning of a writer there are several things to be taken into account—the circumstances in which the writer stood and the probable motive by which he was actuated—the nature of the publication itself, and the occasion on which it was published. Now what was the occasion which led to the immediate publication of this pamphlet? At page 4 Mr. Porter himself gives the reason which induced him to publish. "Again Lord Erne our Chairman says that I am hostile to this company (in which I hold the same small number of original shares as himself, viz. 20) because I have supported the Clones Branches and opposed his Shantonagh Branches—I will therefore make his error quite plain and clear." He alludes to the public meeting held a short time before where Lord Erne made the statement which Mr. Sullivan read to him to-day and which he candidly admitted he had made—namely that Mr. Porter had given the greatest opposition to the line and retarded its progress towards completion. What then is this pamphlet but a defence against that

charge? Why should I be actuated by a spirit of hostility (he asks) towards this line which passes through my property, and which is intended to benefit the town of Enniskillen and the County of Fermanagh in which I have property, and in whose prosperity I am deeply interested? No such thing. I have never been hostile to this line, but to the projects which the directors have been carrying out. I say that you abandoned that which was the best course, namely, to set about making your main line and disregarding all other things until it was made—you spent your money fruitlessly; that is what I am opposing; and that is what draws down on me the charge of Lord Erne that I was hostile to this company; but now I will show you that everything Lord Erne has said in respect to it was founded on error, and that if my advice had been adopted the company would now be in a much better position. Another mode of testing the animus of a writer of this kind is to ask does he indulge in anonymous publications? Does he put forward a letter in a newspaper in a shirking manner, signed by an anonymous correspondent? No, he puts his name on the title-page, and he says boldly in his preface—"As much discussion has taken place about the commercial failure of this Dundalk and Enniskillen Railway Company, I have put means together in these pages for every candid and honest man to form a true opinion." And who is that addressed to? Addressed to the shareholders of the company, by a shareholder, by a man vitally interested in the success and prosperity of this line, and addressed to them upon a subject on which they had a common interest with himself—in other words he lays before the persons who had the power of adopting and carrying his views into effect, if he could only persuade them that these views were well founded—he lays before them the arguments that he thinks can be urged in support of those views in a pamphlet which I need not say was only likely to be read by shareholders. Mr. Porter himself goes to the expense of publishing and circulating this pamphlet. This is not a case where a newspaper proprietor puts a spicy article into his paper full of slanders against an individual in order to make the paper sell. This is the case of a gentleman who has no hostile feeling towards the directors, and who at his own expense

publishes this pamphlet likely to be read by shareholders only ; and does any one believe that a single shareholder of the Dundalk and Enniskillen Railway, who knows perfectly well what Lord Erne's character and motives were, could for a moment entertain the idea that anything but mistake and error, according to the words of the pamphlet, was ever intended to be imputed to Lord Erne by Mr. Porter ? The rules of law and of common sense are alike in this respect. If an author publishes a literary production, every member of the public is at liberty freely and honestly to criticise that production ; and so long as his criticism is not made the vehicle of expressing malignity against the author, it is not to be considered by a Jury as a libellous publication although it may ridicule and censure the author of the work. And, gentlemen, just in the same way all motives and actions of public men in this country are liable to be canvassed and criticized by any individual in the community, be he newspaper writer, or whatever he may be. That is one of the penalties that a man has to pay who abandons the walk of private life and embarks in any public controversy before the community, whether as a Member of Parliament, or Chairman of a Railway Company. The penalty he pays is, that all the acts which he does in that character, are subject to criticism, and every one of her majesty's subjects is at liberty to criticise those acts fully and freely, so long as he does not transgress the fair limits of criticism.

That is the law which will be laid down by the great constitutional Judge who presides over this court, and who has intimated that that will be what you will have to determine in this case ; and I tell you that if once you arrive at the conclusion that the object of this pamphlet was a fair and bona fide one, that the reason why Mr. Porter published it was in order to enable every candid and honest man connected with the Dundalk and Enniskillen Railway, to form a correct opinion as to its management—I tell you, you are not to weigh in the scale of a nice and refined criticism every expression that occurs in that pamphlet ; and although you may think that some of these expressions had been better omitted, that is not the question in the case—the question is, was this man actuated by a fair and bona fide object in discussing this matter before the public, or did



he use that merely as a pretext for indulging in personal hostility towards the Plaintiff! I hardly think you can be asked to find, in the absence of all evidence, and with the denial of the Defendant himself on oath that this is all a pretext—that Mr. Porter merely wrote and published this pamphlet for the purpose of poisoning the public mind against Lord Erne. If you can find that, I tell you without hesitation, you ought to find a verdict against Mr. Porter; but on the other hand, if you come to the conclusion, as I think you must, that his real and bona fide object was to do what he had been perseveringly doing for some time previously—namely, bringing under the notice of the shareholders the way in which this concern was managed—then I repeat, gentlemen, you are not to weigh in the scales of a nice and refined criticism, every casual and isolated expression in this pamphlet. You are to take it into your Jury box and ask yourselves as honest men, what was the real object, and drift, and purpose of the writer, and if you find it was to give candid and honest men the materials for forming a correct opinion, you cannot find it to be libellous, even though your good taste may object to several of the passages in it. Lord Ellenborough, the highest authority perhaps in cases of this kind that ever sat on the bench, thus expressed his opinion in a case reported in first Campbell—“Here the supposed libel has only attacked those works of which Sir John Carr is the avowed author, and one writer in exposing the follies and errors of another may make use of ridicule, however poignant. Ridicule is often the fittest weapon that can be employed for such a purpose. If the reputation or pecuniary interests of the person ridiculed suffer, it is *damnum absque injuria*. Where is the liberty of the press if an action can be maintained on such principles? Show me an attack on the moral character of this plaintiff, or any attack upon his character unconnected with his *authorship*, and I shall be as ready as any Judge who ever sat here to protect him; but I cannot hear of malice, on account of turning his works into ridicule.” Show me in this pamphlet any attack on Lord Erne’s moral character, or any attack on him unconnected with his chairmanship of the Railway, and I will admit, gentlemen, that you will then have a right to find a verdict against Mr. Porter. What are you

asked to find was the meaning of this pamphlet? One of the innuendoes is in these words—"The Defendant meaning thereby that the Plaintiff had, in the year 1855, when examined as a witness before a committee of one of the Houses of Parliament, committed perjury for the purpose of concealing the embarrassments, and misrepresenting the circumstances and affairs of said company." This innuendo has been stated in a different form in another Count. The Attorney General now asks you to find that this document charges Lord Erne with perjury, with corruption, with being a fraudulent trustee, with being a hypocrite and a knave. Now I think I will make it as clear as light that every one of these innuendoes must be negatived. You have two issues to try. First, is the pamphlet a libel?—and next, was it published in the defamatory sense which the Plaintiff imputes to it? Does it charge perjury, corruption, fraudulent conduct, hypocrisy and knavery against Lord Erne? Now every publication is to be judged of by its entire drift and object; and we know that the greatest mistakes into which people have ever been led, have been mistakes that have arisen from interpreting books and writings, not by looking carefully through them, but by taking up particular passages here and there and putting a meaning upon them which the passages alone might be capable of bearing, but which were inconsistent with, and repugnant to, the general scope and meaning of the work. I need not appeal to your own experience that any argument of that kind founded on isolated passages from the work of any author, might be made to lead to the most erroneous conclusions, if care were not taken to see how far that passage might be covered and explained by the other portions of the work, or by the motives and feelings which it might be known were present to the mind of the author at the time he wrote it. Now, gentlemen, the first passage in the pamphlet speaks of Lord Erne's mistakes as Chairman of the Dundalk and Enniskillen Railway. Let me pause for a moment here. You are asked to say that Lord Erne was charged, not with mistaken conduct, but with corrupt conduct. Now would it not be a most singular thing for an author to impute to an individual in one breath both mistake and corruption in respect to the same transaction? Could anything more inconsistent be conceived? Mistake is

an honest thing—corruption is a vicious thing—can a man act in the same transaction from a mistaken motive, and a wilfully corrupt motive? One is a contradiction of the other; and therefore if I show you that the entire scope of the pamphlet is to show that Lord Erne fell into mistake and error, you will be slow to put an interpretation on the passages that have been carefully selected from the pamphlet, that Mr. Porter intended to charge the noble Lord with personal corruption. Am I wrong in saying that the drift of this publication is to charge the Directors and Lord Erne with mistake? When you see what he wanted to be done you will be satisfied that he never meant to make a charge of corruption. If he had brought forward such a charge would he not have called for the removal of the Directors, and for the appointment of a committee to enquire into their conduct; but what does he ask them to do? He asks them only to protect their own interests in this way, by enforcing his views, that no money should be expended in the construction of these branch lines, and that the whole concern should be sold to one of the adjoining companies, if any of them were willing to purchase it? The pamphlet opens by charging Lord Erne with mistake—it speaks of the line as a commercial failure; and then in page four there is this passage: “It is painful now to look back at the fair offers then made to our directors and refused by them. But for their folly our main line would long since have been opened to Enniskillen, and our shares would now without doubt beat par.” Is it by the fraud and corruption of the Directors that he says the line has failed? No, but by their folly and mistake. In another passage he goes on to say: “I will therefore make Lord Erne’s error quite plain and clear, and can allow for his annoyance at finding that the complete failure of his statements is now notorious over all Ireland.” Are you to believe, gentlemen, that the author of this pamphlet, who in express terms charges that the commercial failure of this enterprize arose from the folly of the Directors, and the mistake of Lord Erne, was at the same time charging in the same publication, fraud and corruption against the persons to whom he was attributing innocent mistake. Again at page 11 he says: “The great lossto Fermanagh, from Lord Erne’s railway *mistakes*”; and

in another passage subsequently he says: "Then another hobby of our Directors is to prevent any railway between Enniskillen and Sligo, and which will be a good excuse for more law suits." That is, he shows that the Directors were led away by the hobby of making branches themselves, and preventing other companies from making branches, and he attributes to this course much of the injury which the company had sustained. This passage alone, if there were no other in the pamphlet on which we could base an argument, makes it perfectly clear, that nothing but an error in judgment was ever intended to be imputed to these Directors.

In page 12 he says that the "County Fermanagh can draw one most useful moral from the failure of Lord Erne's attempts to make his Shantonagh branches, viz. that in our free and public system of Government the most violent energy, high rank and influence and great wealth cannot, when firmly and steadily opposed, succeed in a wrong course, because the whole public is now the last Court of appeal in all disputed matters of this kind, and though perhaps misled at first by names, will soon come to a right judgment if misstatements on one side are always corrected by true statements on the other. If a rich energetic man makes an error of judgment, the only effect of all his means and exertions is to take him farther and farther from the right road, and with more loss at the end, not to save him or his followers from its bad consequences." Who is the rich energetic man there referred to? Manifestly Lord Erne, and it is an error of judgment only that is imputed to him. The vote of thanks given to Lord Erne at the last half yearly meeting—and which I say never was denied or qualified by Mr. Porter—was returned to him for his exertions in connection with the affairs of the Company. When Mr. Porter writes to explain the part he took in joining in the vote of thanks, he says, "Lord Erne is entitled to thanks for his exertions on behalf of the Company—that is, I don't think he managed the Company well, but I think he is entitled to thanks for his exertions on its behalf." Mr. Lawson then read Mr. Porter's letter to the *Daily Express*, explaining the nature of his concurrence in the vote of thanks, and proceeded: That is Mr. Porter says, "my opinion is, that the explanations of Lord Erne and the directors were not satisfactory. I would be a most inconsistent man if I said they

were, for on the 9th of August I published a pamphlet in which I arraigned the whole management of the line, and said that but for its mismanagement our shares would be at par," and accordingly he thanks Lord Erne in this vote for his energetic exertions on behalf of the Company, but not for his skilful management, and here in the pamphlet he uses a similar expression, speaking of him as a "rich energetic man" who had made an "error of judgment." His meaning is plainly this, that Lord Erne, a rich man, and a man of great energy, had devoted himself perseveringly to the affairs of the Company, and because he was misled by the advice of others—because he was not able to attend personally to the details of the management, he had fallen into an error of judgment, the result of which was to entail bad consequences on the line from which he (Mr. Porter) as a shareholder in the concern, and largely interested in it, and a large proprietor in the county through which it passed, had suffered; and that he was therefore anxious to call the attention of the shareholders to this state of things, and asked them to concur with him in thinking that Lord Erne and the Directors had been guilty of an error of judgment. But is it to be heard of that in the same pamphlet he arraigns him as a perjurer, a jobber, and a fraudulent trustee. Even if the passages complained of might at first sight seem to bear that meaning, yet when taken in connection with other passages in the pamphlet, and explained by the object and drift of the writer, it is impossible to give that construction to them. I ask you then to take them in the mildest sense of which they are capable, and which my client says they were intended to bear. The first passage which has been selected as the subject matter of the present libel, and on which you are asked to put a defamatory construction, is one in which it is asked, "why have improper means, improper patronage, improper political influence, been used to promote views that have failed?" Gentlemen, I beg to deny that that is a libel. It is said that my client imputes the use of improper political influence for the purpose of getting acts passed by Parliament. Now we are perfectly aware, with all due respect for the incorruptibility of the Legislature, that political influence is constantly brought to bear to effect these objects; and therefore it is considered a great point with railway companies to have peers or members

of parliament on their boards, who can exercise influence in either house. Therefore, gentlemen, I take leave to deny that the passage is a libel. It is not pointed at Lord Erne himself; it says the directors generally have used improper means; but I deny altogether that it is a libel; and I can only say that if every shareholder of a company who states that improper means have been used by the directors to obtain certain acts of parliament is to be made answerable as a libeller, it would stifle altogether free discussion on that which it is most important should be canvassed freely and fully, without fear, favour, or affection, the conduct of public men as the chairmen or directors of public companies, or managing the affairs of the shareholders confided to their charge. But now, gentlemen, we say that the most grievous and unjustifiable of the innuendoes is that which asks you to find that Mr. Porter charged Lord Erne with perjury.

Gentlemen, no verdict you can pronounce against Mr. Porter, can give him any pain and annoyance compared with that which the idea that any rational man, reading this pamphlet, could suppose that he intended to make such an imputation, would carry home to the breast of Mr. Porter. On his part I indignantly repudiate the idea that such an intention ever entered into his mind. What is the meaning of a man perjuring himself? It is swearing that which he knows to be untrue. Is there any allegation in the entire of this pamphlet that Lord Erne did anything of the kind? What does Mr. Porter really say? He says, that Lord Erne gave the result of certain calculations before a Parliamentary Committee, and that three years only have shown that his calculations were altogether astray on both sides. What were those calculations? They were that by a certain course of management, assuming that the railway did not cost more than a certain sum, there would be £60,000 surplus towards the making of branches; and am I to be told that because a gentleman says, "you were wrong in your calculations, and if you had waited three years you would have seen that you were proceeding upon an erroneous basis"—that that meant to impute perjury to my Lord Erne—to accuse him of swearing falsely on a matter of fact. That is completely negatived by the conclusion of the passage, for Mr. Porter goes

on to say that the truth of the statements he made "he could have ascertained by proper enquiry." It is an insult to your understandings, to ask any one of you to believe for one moment, that any one reading that pamphlet could arrive at the conclusion that Mr. Porter had ever meant to say, that Lord Erne had wilfully stated anything that was untrue. He was merely following up what he had said before, that if his Lordship had taken greater pains to inform himself on the subject, he never would have made those statements. In another passage he says—"My views in 1854 and 1855 were that though our directors swore the profits from these branches would be 12½ per cent, no private parties would believe them, &c." If he charged Lord Erne with false swearing in the passage selected, you must equally say that he charged the directors with false swearing in this passage—and it is not likely that you can arrive at such a conclusion with respect to either of them. What does he say again—"Common prudence should have made Lord Erne at the head of the company, but not able to attend to its detailed management." That, gentlemen, is the secret of the whole thing. Lord Erne was not *au fait* at these matters of finance, and he went forward and gave the authority of his high name in the House of Lords to a statement, that if a particular thing took place the result would be a surplus of £60,000 after making the line. Mr. Porter says that that was a great mistake, and that his Lordship would never have made the statement, had he been able to attend to the affairs of the company, and therefore the idea that he was charged with making a wilful false statement is as wild a suggestion as was ever put forward. How does he put the case in page 21?—"Any future Parliamentary Committee would also see the statements, which are all on record made with the strongest assurance in 1855, by your directors to that year's Parliamentary Committee, and knowing now how they have been fulfilled, would know what value to put on any similar promises by the same parties."

That is, the directors went forward to the Parliamentary Committee, with an assurance that if this act were granted, they would have so much money to make the main line, and so much to make branches. That is all that is attributed to Lord Erne, and really the notion that it ever was intended to impute

wilful mistatement to his Lordship is one of the greatest of delusions. It was a matter about which no man could tell a lie, because it was altogether a prophetic thing, based on calculations which it remained for the future to verify or overthrow. Another passage declared on in this case, is that in which the act of Parliament for the punishment of fraudulent Trustees is referred to—an act which makes a director of any public company liable to a punishment for misdemeanor, if he shall publish or circulate any account or statement of the affairs of the company, which he knows to be false in any material particular. Now, when you are asked to say in the terms of the innuendo, that Mr. Porter meant to convey that Lord Erne had brought himself within the spirit, though not within the letter of this act, I ask you or my learned friends on the other side to point out any one passage in the pamphlet, showing that Mr. Porter alluded to Lord Erne having ever made any statement which he knew to be false in any material way. I will read you passages by the dozen which are to the contrary effect. Here is one—"I quite concur in the general opinion that Lord Erne in these and many similar statements is only the dupe in matters he does not understand; but I am astonished that, in justice to himself as well as to our interests, he does not either inquire carefully into their truth beforehand, or else give the authority upon which he makes them."

Why, gentlemen, does not that furnish a conclusive negative to the innuendo? Did you ever hear of justice to himself from a man who was a fraudulent trustee? Did you ever hear of justice to himself from a man who was arraigned as a perjurer? Did you ever hear of justice to himself from a man charged with being a hypocrite and a knave? No, gentlemen, the meaning of it is this. Lord Erne's character stands high in the general estimation of the country, and I am astonished that in justice to himself, to keep himself right with the public, he should not before he commits himself to one of these statements enquire carefully into its truth. Would not the whole of this passage be absurd, if he meant to charge Lord Erne with making a false statement? And why does he say that Lord Erne should make these enquiries? Because he enjoys so high a position not only in the political, but in the religious



world, that the public attach greater weight to the slightest word that falls from his lips, than they would perhaps to the words of another who did not stand in so lofty a position ; and therefore he says, " Lord Erne, (and the argument is sound and just) in direct proportion to the weight which your statements command with the public, ought to be your caution before you make these statements in inquiring into their truth beforehand, and in not committing your high and noble character—that honor on which you say a stain has never rested—to statements which the public will implicitly believe because they come from you—until you have satisfied your own honest heart and mind by diving into matters of detail, which you never before have examined, that these statements are true and accurate." I deny that this means that Lord Erne had acted as a fraudulent trustee, and had only escaped the punishment due to a fraudulent trustee by means of an accident. On the contrary, its manifest object was to point out to the Directors, how careful they ought to be in satisfying themselves of the truth of the statements which they laid before the public, and to suggest to Lord Erne in particular, that he should be especially cautious in these matters, because everything which had the sanction of his name, was implicitly believed by the public. In another passage, Mr. Porter speaks of flattery of the noble lord, the meaning of which is, that other persons deferred humbly to his views, and therefore found it the more easy to induce him to accept as accurate, the statements which they made to him without making any previous enquiry into the subject himself. That passage was never meant to imply that Lord Erne had by undue influence caused a handsome station to be built at Lisnaskea ; and it is absurd to call it a libel. I don't blame the Directors for giving Lord Erne a good station at Lisnaskea. If they spent more money at that station, than in the opinion of an economical shareholder they ought to have done, I think it was a venial error which shareholders might criticise, but which imputed no moral culpability on the part of Lord Erne, no jobbery, no corruption, nothing improper, nothing that any man should blush at hearing mentioned. I think it was a very natural thing that the Directors, to please Lord Erne, who has so large a stake in the con-

cern, should have built a handsome station at Lisnaskea, even though they might have spent more money on it than economical shareholders such as Mr. Porter could approve of; and it is going very far indeed to insist that the passing allusion to the subject made by Mr. Porter, is of a libellous character. Gentlemen, I ask you to take the pamphlet itself into your jury-box, to consider the fair observations we have made to you on it, and if they commend themselves to your good sense give us the benefit of it, and come to the conclusion (which I think you must do) that these monstrous innuendoes are entirely unfounded—that you cannot think Mr. Porter intended to do that which, on his part, I emphatically disclaim his having ever intended, namely, imputing anything derogatory to the private character of Lord Erne. I ask you if you believe that Mr. Porter published that pamphlet from an honest motive, not to weigh every casual expression it contains in the scales of a refined criticism. I dare say you will find passages which were much better omitted, and of which you cannot approve. Still be not driven from the cardinal point. You are asked to find this to be a malicious libel—to declare that the defendant went out of his way in criticism, to throw imputations on the private character of Lord Erne. Don't be driven into this illiberal construction of the publication, but if you believe that he acted honestly and with a view to circulate his sincere views respecting the management of the railway amongst his brother shareholders, do not condemn him because there are things in the pamphlet which you think objectionable, and which might have been omitted without weakening the force of his argument.

I have already said that this case is a trifling one as regards the railway dispute, but it seems to me to involve an important principle, and I trust you will hesitate long before, by your verdict, you give a check to the free discussion of matters connected with railways, or other subjects in which the public are deeply concerned. I ask again, is there a passage in which Lord Erne's name is mentioned except in connection with his acts as a Director? Is he spoken of in any other relation of life which he fills except in his character of a Director. Read over all the passages commented on on the other side, and is there a single word alluding to him in his private capacity?—

is there anything to detract from him as a man of honor and of integrity, or to impute that he is unfitted to discharge those numerous high and important relations of life which he discharges with so much honor to himself and so much advantage to his country? Not a single word of the kind is to be found. Gentlemen, the law of libel in these countries has worked well, I hope it will always continue to work well, and the reason of that is—I fear not to say it—because the question of whether any publication is a libel is to be decided by a Jury, and by a Jury alone. We are not, I thank God, living under a *regime* in which that man who publishes a pamphlet reflecting on public affairs is liable to be tried for that pamphlet before an irresponsible magistrate, who is the creature of the crown or of the despotism under which it is published. No, our law is wiser than that. We have no such magistrates in this country as persons ready to do the beck of the crown. The magistrates of this country administer right and law under a solemn sense of duty and responsibility; but even with all that, so carefully has our Constitution hedged around this privilege of free discussion under which we live and by virtue of which we breathe, that it has confided to you, and to you exclusively, the right and the privilege to pronounce on any publication coming before you whether, under all the circumstances of the case, that publication is or is not a libel. I say that that has worked well, and why? Because every man asking damages for a libel on himself must put himself into the hands of twelve men of like feelings and passions with himself, and Juries have ever been prompt—and I trust they ever will be prompt—to punish the private libeller and the private slanderer. If any man, under colour of doing the public a service, makes a publication the vehicle of disseminating feelings of malignity towards any individual—if not content with walking on that ground which he has a right to tread with a firm step and head erect—namely, the fair and open field of public discussion—if he steps within the hallowed circle of a man's own private home and character—if he dares to strip away the veil that hides it from the public, and dips his pen in gall, and wantonly assails those sacred relations of private life which we ought to guard with jealous care—no Jury could be too severe in punishing that

man, and no Jury ever hesitated to punish a person who has so acted. But, gentlemen, on the other hand it would be attended with fatal and dangerous consequences, if men who boldly and fairly come forward to discuss public questions, and criticise the acts of public men, are to be declared libellous although they do not attack private character, but confine their strictures to the public capacity filled by the persons whose acts they criticised and condemned. If, gentlemen, you were to visit such a man with punishment, in consequence of some general phrases introduced in the publication, and applied strictly to the person complaining in his public capacity only, you would be doing a serious injury, believe me, to yourselves. and to that Constitution of which you are the privileged protectors. Gentlemen, you should hesitate before you draw a bit more closely than it stands at present that line within which free discussion should ever take place. When a man is libelled in his private character he does not wish to come before the world and explain all the minor influences that have actuated him as a private man, and expose the features of private life, and drag forth the feelings of his friends and relatives before the public. Therefore he has no protection, for he cannot discuss these matters in public, and his only remedy is to come before a Jury and ask them to compensate him for the injury he had sustained and to punish his slanderer. But if this pamphlet be, as I insist it is, nothing more than a fair, temperate and calm discussion of the affairs of this Dundalk and Enniskillen railway company, what was Lord Erne's and his brother directors' proper course? Their course was to meet argument by argument. They should have called a public meeting, and challenged Mr. Porter to the proof of his statements, and invited the fullest enquiry into their management of the line. That is the tribunal to which Lord Erne should have appealed, and if you find, as you will, that no allusion has been made to Lord Erne in his private relations, but simply to his character as chairman of the railway company, you will, I trust, return a verdict for the Defendant.

This is a very singular case. Here is a man who says he was libelled. He comes here and asks you to fasten upon words which the man who wrote them says he wrote in an

innocent sense, and not in the defamatory sense imputed. He is not contented with that disclaimer. He never says that he asked out of court an explanation of the objectionable words. If he had, he would have been told that the Defendant never meant to impeach his moral character in the slightest degree. We have concealed, or kept back nothing—we have dealt with the case in the most open, frank, fearless, and honorable manner. We have put on the table, not only our own client to subject him to cross-examination, that the Plaintiff's counsel might elicit from him whether he was actuated by feelings of private malice towards the noble Lord; but we have also put Lord Erne in the witness box. Mr. Porter stands on his right as a subject of this realm, and a shareholder of this company to discuss its affairs calmly, temperately, but fully and fearlessly. He published this pamphlet with the bona fide object of enforcing his views as to the management of the railway on the shareholders, who had the power of enforcing them if he should succeed in inducing them to adopt his opinions. He comments strongly on the mistakes of the directors, but I venture to say, notwithstanding all you have heard on the other side, you will not be able to put your hands on your hearts and say that there was a malicious intent existing in the mind of this man. He intended to fling no venom on Lord Erne—why should he? He entertains feelings of the deepest respect for the noble Lord, which I express with pleasure. He therefore rests this case on public principle. He relies on his right to bring this question, as to the management of the company over and over again, under the notice of those equally interested in it with himself; and I will be slow to believe, gentlemen, that you will allow the man who does this without malicious or evil intent, but the contrary, to be victimized, as Mr. Porter has been sought to be victimized, by making this a state trial, by bringing the most eminent counsel here to try to overwhelm us by their bar, by garbled extracts from this pamphlet selected with a view to show that Mr. Porter was acting dishonestly and maliciously. Gentlemen, I ask you to find the reverse; and believe me that no verdict you can give will give so much pain to Mr. Porter, as the idea that any rational man could come to the conclusion from reading the pamphlet, that he was so

base as to be designing to impute corrupt motives to Lord Erne, when his object was a fair and bona fide one, freely, warmly, and perhaps with acerbity (I will go as far as that) to discuss the affairs of this company, in which he felt so deep an interest. But that he ever left the public ground, and went upon the private one, and slandered Lord Erne in any respect. I indignantly deny; and therefore, gentlemen, on the question which his Lordship said he would leave to you—whether this was a fair criticism of the public character of Lord Erne as Chairman of the Railway Company—I do most confidently anticipate your verdict—(murmurs of applause).

MR. BREWSTER, Q.C., then rose and said—Gentlemen of the Jury, perhaps no advocate ever rose under more disadvantageous circumstances to address a Jury, because it has been a principal object of both my learned friends, who have preceded me to indulge in very exaggerated compliments to myself. Now, do not for a moment suppose that I attribute to them any insincerity in that, because I do believe that both the one and the other of them do entertain a sincere regard for me, and they know I know it so well that they never would have thought it necessary to express it so strongly in public. They do so with a view, probably, to have some influence on you. When I have done, I trust you will be under the impression at all events that I am not less fair in my comments than they have been. It will certainly be a chief part of my duty to you to endeavour to shew you that my learned friends have with consummate ability, but with the greatest fallacy, misrepresented many many parts of this extraordinary publication. My own feeling is very strongly this, that if the document which will be submitted for your consideration, and the whole document be not sufficiently clear to satisfy a just, rational, and intelligent man, what its meaning, object, drift, and purpose is, nothing I can say will have the least influence upon you. But as much has been said in reference to certain matters, and as much new law has been prepounded since I have been in the habit, which I once was, of attending trials of this kind, I do feel it necessary to go back a little, and strange as it may seem at this time of day, to say a word or two on the nature of an action

of libel, and the doctrines that are involved in the law on that subject.

Gentlemen, a libel is any writing composed and published to the ridicule and contumely of another, by which his fame or his dignity may be prejudiced. That is the definition given by one great judge. Another great judge has given the following: that any writing, provided the tendency of it be to bring any man into hatred, contempt and ridicule, is a libel. Our law considers that one of the most grievous injuries any one man can inflict upon another is to libel him. One cannot be much surprised at that, when we reflect that there is nothing so valuable in this country to a man as his character and reputation; but so strongly does the law hold on that subject, that it not only makes libel the subject of a civil action, like the one now before you, but it is also the subject, or may be the subject, of a criminal prosecution; and if Lord Erne had pleased here he might (supposing I should convince you by and by that this is a libel,) instead of bringing Mr. Porter to answer here in a manner about which Mr. Porter does not care one straw—namely, a civil action for damages, a matter of indifference to a man of his vast fortune—he might have made use of the law by which the Defendant would have been exposed to punishment as a criminal, instead of having merely to pay some of that dross which of course he despises and disregards. Gentlemen, the difference is this, that a man who comes into a Court of Justice and puts the criminal law in action, excludes his antagonist from a great privilege. He excludes him from the privilege of saying this, “’Tis true I wrote what you complain of, but every word of it is true.” If you bring a man before the criminal bar, the law does not allow him to say that; for so tenderly anxious is the law to protect character from slander, that the law cannot allow a man to justify himself when placed at the bar of criminal justice, by proving that every word he said was true. Therefore it is when a man like Lord Erne has been so teased and tormented by a continued succession of publications, all of which he passed by, as he was obliged to pass by their author when he met him, the only mode which he could take was that which Lord Erne has taken—namely, to bring his assailant into a Court of Justice, in which he dares him to the

proof of his accusations, with the hope that if he is not able to do so, he may put a stop to his proceedings by the aid of a jury, who will tell him, that it is not safe to publish slander against another, and that if he perseveres in it he will be made to pay for his violation of the law. When a man is brought into a Court of Justice, charged with the publication of a libel, several courses are open to him. He may say, and it is a complete justification, that what he has published is true. I don't care if the greatest crimes that can be committed by man are imputed by the alleged libel to the Plaintiff, if the man who asks for damages has been guilty of the crimes charged against him, he can get none. His adversary has nothing to do but to say: "I charged you with these crimes, and the charge is true; and I have not only charged you with them, but I will prove my statement, and send you away from court condemned by the verdict of a jury." That is one course, a fair, just and honest course, which a Defendant can take in a case of this description; for no man ought to come into this court to ask reparation for defamation of his character, if his character be such that it cannot be defamed. There is another course open to a Defendant. He may say, "I did write all that, but I had no malice in doing so; for I wrote it on what the law calls a justifiable occasion, and I wrote it believing it to be true, and the occasion on which I wrote it is a justification." If a man does say that, he is bound according to the present rules to put it on the record; and here I want to show your Lordship that a covert attempt has been made to do that which the law does not allow them to do, by the speeches of counsel, instead of putting forward a justification in the regular way. If the Defendant had done that it would have cast on my client an obligation of a different character from that imposed on him here. First, he would have been obliged to come here to prove that everything in the libel was false. There was however no justification applied to any part of the libel, but the course of the Defendant is to admit before he comes into court that every single word of it is false, and then to get up and say by his counsel that every word of it is true. That is the course which has been pursued here. When I come to the libel I will call your attention to some matters in it, which will show the



monstrous injustice of such a course as that—that instead of having it pleaded, we should have all the ingenuity of two of the most ingenious gentlemen that I am acquainted with, and who know well how to put hard things into soft words—we have all the ingenuity of these gentlemen exerted to show you that this was a justifiable occasion, and that every word which is in this extraordinary production you must believe to be true. They say that all this is a matter which they are authorized to write, because it is a matter of discussion about that which is a public subject; and my learned friend, Mr. Armstrong, put it pointedly that this was a matter of public discussion, and that therefore the greatest possible latitude was to be granted to every man who took part in such a discussion.

My Lord, in reference to that (and it is to your Lordship here that I must address myself,) I apprehend it is a grievous error and mistake, to suppose this is a matter that comes within the principle of public discussion. It is quite true that the conduct of politicians and statesmen—of men who hold themselves out to the world as managing all our interests, superintending and directing the affairs of the country—are to be exposed to the largest and the widest criticism. I will not go into the cases that led to that principle, or to the doctrines involved in it—they are known popularly by the phrase “the liberty of the press.” To circumscribe these powers would at this time of day be impossible even if it were desirable; but I am as little disposed as my learned friends to put the least limitation on the power to investigate and criticize the conduct, and even under certain limitations, the motives of public men. But I altogether deny that any such principle applies to a railway company, or any other commercial speculation; and now, gentlemen, a word or two to you on the point; for you will find that your interests are more deeply involved in the matter than you think. In the eyes of the law and of common sense, a railway company is nothing more than a great partnership. They have the same duties as between themselves, except so far as they are regulated by acts of Parliament, and all the researches of my learned friends, will not find any act which says that any shareholder or director of a railway company is entitled to discuss in a way that would be libellous, the conduct

of his co-directors. I say boldly, the law does not differ in the slightest degree in the case of a partnership where there are a hundred or ten hundred members, as in a railway speculation, from the law applicable to an ordinary commercial partnership in this city of which any one of you may be a member; and the doctrine that is now put forward to you is, that a partner in any partnership concern, is at liberty to publish anything he pleases of his partners, provided he professes to speak of them in that capacity. Mr. Lawson said—"Look at this pamphlet and see is there a word said about Lord Erne except as a director?" Quite true; but, gentlemen, a director is not a disembodied spirit, but a living being with a head, and hands, and feet, and shoulders, and a mind, with all the motives and passions that belong to a man; and being a director it is said, you may talk of him as such, and introduce into your discussion everything you please about him as a man, only just put it under colour of his being a director, and then blaze away until you have him blackened by your powder, so that you cannot distinguish a feature of his face. That is what my learned friend so implores you to assert as a principle, in order to preserve that paladium of our liberty—free discussion. My learned friend who last addressed you is more of a public man than my other learned friend; and I always observe that such men diverge into popular topics. Accordingly he got at once on a topic, which would be quite appropriate if he were bringing in a law for supporting, and guarding, the liberty of the press, but which was quite out of place in the matter of fact question before us—whether Mr. Porter libelled Lord Erne. These are the grounds that were put forward on Saturday and to-day—some of them I say, because no doubt there were a good many others, and on which you are called to find a verdict for the Defendant. I have stated, gentlemen, that this argument, that the principle applicable to the discussion of public questions applies to private matters also, is a grievous error indeed. It was ruled in the case of *Gathercole v Miall*.

The CHIEF JUSTICE—I may save you some trouble by telling you that I have a note of the way in which the case was put, with the observation that you cannot libel a man as a director, by imputing to him as a director what would be defa-

mation if you imputed it to him as an individual—as one of the erroneous views that has been taken at the other side. But with respect to the right of a member of a company to comment fearlessly, strictly, and severely, if he had a foundation for it—on mistakes, errors, and the general management, I am quite clear he has that right.

Mr. BREWSTER—Most undoubtedly ; and so far as comments are legitimate comments on the mistakes of the Directors, irrespective of private affairs, there can be no doubt on the subject. But Mr. Armstrong told you that the whole object, drift, and purpose of the pamphlet, was this railway discussion, and he insisted that it never was intended to make the slightest assault or imputation upon the public or private character of Lord Erne. My learned friend, Mr. Lawson, went further, for he pronounced an eulogium not more eloquent than it was just upon the life, the character, and the conduct of Lord Erne, and they both are most desirous that their client shall have the benefit of that with you. I am sorry to say I shall call on you to consider their expressed opinion of Lord Erne, the greatest aggravation of the misconduct of the Defendant towards him. There is a part of this case I am almost ashamed to trouble you with ; but as so much was said of the management of counsel, I wish to say a word or two, to show you that we are not such skilful, manœuvring and crafty people as we are represented to be. It is said—(I took down the words of Mr. Armstrong, and my learned friend, Mr. Lawson, followed in the same strain. I don't complain of their observations, they were intended to convey left-handed compliments to us)—It is said that we came here with great dexterity, and tried to blindfold the Jury, and we were told that we asked for damages in the dark, and amongst other things that Lord Erne had not manifested a sound discretion in bringing the matter before the public. Gentlemen, there was only one part of Lord Erne's conduct that I thought indiscreet, and that was in bringing me here, upon which I expressed my opinion very forcibly ; but he would have it for reasons which it is unnecessary to trouble you with, and which have nothing to do with our respective duties here. We were told that we did not come here in an open and direct manner, that we came in an underhand way ;

and it was complained that this enormous pamphlet was not opened to you by the Attorney-General, and that he did not comment on it. Gentlemen, that beats anything I ever heard. Of course Mr. Porter may have considered that a great grievance. We all love our own offspring, and it generally happens that the more ugly and deformed they are, the greater is the love we bear them, and the more indignant we feel when any one speaks disparagingly of them; and no doubt it was the greatest mortification to a professed author, as it now appears this gentleman is, to have his cherished production disparaged in such a rude and contemptuous manner. Undoubtedly too, gentlemen, I honor him for the truth and candour, with which, when asked the meaning of one of the libellous passages—having both his feelings as a gentleman, and his pride as an author at heart—he said, “the words speak for themselves.” “What do you mean, sir,—you have it there, the language is English, and the words just mean what they say.” Is not that a complete answer to all you heard from my learned friends in their efforts to gloss over these libels? What has been the burden of their duet? It has been this; you are to dive into and find out the motives that actuated Mr. Porter. I tell you that you have no such duty. That does not belong to you, it is reserved for a higher tribunal. No man can dive into the motives of another, but every one is capable of judging of his acts. From his acts you must find out his motives, not from the gloss which his counsel puts upon them. I will have to ask bye and bye to what motives you must attribute his acts; but at present I am trying to get rid of all that has been heaped up in this case in order to conceal it from your view. My learned friends went so far as to say that the pamphlet should have been examined and explained to you by the Attorney-General. Why, gentlemen, if he had examined it, taken it to pieces, and shown how much there was of fudge in it, how much of absurdity, and how much of malice, what would have been said of him then? Oh, it was a most unfair thing to deprive his advocate, of the opportunity of laying his own case properly and truly before the Jury. We are guilty of a sort of dexterity that merits your reprobation, and calls on you to act with caution, because we did not state his case, but left it to persons

fully as eminent as ourselves, to exercise all their ingenuity and talents to place it before you in such a light as to excuse their client ! But I will tell you what was the secret. My learned friend would not have been so scrupulous in dealing with the pamphlet if he were quite sure that nobody would be able to answer him. What they wanted was, that the whole of the pamphlet should go to the Jury as part of our case, in order that Mr. Armstrong's speech might go to you unanswered, save in so far as the Chief Justice might think it his duty—and in this case, I have no doubt he would have so considered it, to make some comments on the arguments that were addressed to you—nevertheless a more prejudicial thing to the due administration of justice, I cannot conceive than throwing upon the Judge the appearance of trying to answer counsel. You have heard everything that ingenuity, ability, and talent, can suggest from my learned friends, and it is only fair that I should have the liberty of suggesting to you what I think is an answer to their arguments. That is the real grievance, gentlemen ; and the grievance, as you will perceive, is, that so far from keeping you in the dark. we are throwing too much light on the case by letting you hear both sides of the question.

My learned friend who first addressed you referred more than once to the condition of the Dundalk and Enniskillen railway. I did not see his brief—it would be very wrong that I should—but nevertheless I cannot but think he could not have read it without seeing that the most agreeable service, I won't say the most efficient one, he could render to his principal was to take a good strong kick at the railway,—and no man can give a better one,—and accordingly he told you that there was an absolute necessity that his client should come forward as a public champion to expose this wretched, mis-managed, sickly line. Surely you cannot doubt but that Mr. Porter will consider £500 well spent in having that expression of opinion from such a man as my learned friend about this railway company to which Mr. Porter entertains the most determined hostility. He has gratified himself ; he has instructed his counsel so to do ; but he must not be allowed to carry himself away under the false pretence that he is coming here as a public benefactor to expose the errors and mistakes

of Lord Erne. He must stand up and account for the manner in which he has thought proper to assail the noble Lord and those associated with him in the management of a great public undertaking. He has had his say for it, and the least you can do is to put the price upon his whistle. Lord Erne is not to be heard here, because at a public meeting at Lisnaskea, when the railway was opened to that place, Lord Erne stated that they had succeeded in getting so far notwithstanding the determined opposition of Mr. Porter, who was a bitter enemy of the line. There was nothing slanderous in that. It may have been quite unfounded. It fully authorized Mr. Porter to prove that he was not an enemy of the line; and so far as his pamphlet goes to that, let no man gainsay it; and had his pamphlet been for that purpose, and that purpose had been honestly and legitimately carried out, Lord Erne would have passed it by as he did the numerous placards, hand-bills, letters, and every other description of publication that the fortune and the *cacothres scribendi* of Mr. Porter enabled him to deluge the public with. He says that the imputation upon him that he had delayed the progress of the railway, was one so grievous that he could not bear it. Well if he could not bear it, let him throw it off his shoulders. He says his anxiety was such to have this railway finished, that it was the cause of all his hostility towards it; and finally he says, you cannot entertain a shadow of doubt as to his excellent feeling towards Lord Erne, because at the close of the half yearly meeting of the company in August, 1858, and after the publication of this pamphlet, he was moved into the chair as a matter of form, to do what? To do what he could not help. A gentleman moved a resolution of thanks to Lord Erne, and placed it in Mr. Porter's hand; another gentleman seconded it; and Mr. Porter was under the necessity of reading it to the meeting, and putting the question to them, whether they would adopt it or not. He did that, and when he went home he said, "this is a pretty fix I was put into," and he gets his ink and paper and writes a letter to *Saunders' News-Letter*, to apprise the public that he did not concur in the whole of this resolution, but only in a part of it—namely the part that referred to Lord Erne's energy in enforcing his own views, whilst the only part that was worth anything, that which sanctioned the

propriety of Lord Erne's conduct, he did not concur in. And that shows the excellent motives of this gentleman towards Lord Erne. It seemed to me to be a very odd way of justifying Mr. Porter. Gentlemen, differences of opinion will always exist in every subject. I know of but one place where they are mischievous. My belief is that everything in the world is advanced by differences of opinion, and there is but one thing in which there should be no difference—and that is yourselves—a difference of opinion amongst a jury is a misfortune. Yet in such cases we have all head that sometimes there is to be found one obstinate man, who cannot convince the other eleven. This is exactly the case of Mr. Porter and the Directors and Shareholders of the Dundalk and Enniskillen Railway. Write as he will, print and publish as he will, he cannot get any one to agree with him. Is not that very odd? You have heard a great deal about the relative position in which these parties stood towards each other, but you have not yet learned what their actual position was in connection with this railway. The capital of this company amounts to £850,000. Mr. Porter represents of this £600—poor Lord Erne has only £100,000 embarked in the concern. Does any one believe that Lord Erne has put his money into this concern for the mere purpose of realizing an income out of it? Gentlemen, it is a characteristic act of his. Have any of you ever been in the town of Lisnaskea, of which you have heard so much in the progress of this case? If you have, you saw what is a rare thing in Ireland, and of which any part of the Empire might well be proud. You will see there not a village, but one of the most thriving and prosperous towns in the country, manifesting in the most unmistakable manner the constant presence of a beneficent, liberal and benevolent proprietor. With a view to the prosperity of that town, of which he is the head, Lord Erne advanced that enormous sum to the company.

Mr. Porter is in a condition of almost equal wealth. If he had come down with his £50,000 then I could understand that his views would be listened to with attention, and when he went to the meetings of the directors, he would not have found every man's hand against him; would he ever have resorted to this mode of dealing, if he had not been mortified to the quick, because he was, to use a vulgar expression, "no where."

Mr. Porter may be fairly compared to the one dissentient Jurymen. If any one of you after sitting on a Jury differed with the other eleven, and said of them—"There is not such a set of Jurors as this to be found—they are impervious to all reason, and as for the man who is the foreman of them—that is a man who goes to Church on Sundays—that is a man who takes the chair at religious meetings—that is a man who is a Church Education Society man—and just see what he did—Is not that a nice fellow?" would you not be astonished if you heard it said—"Oh, that does not import ridicule—that is a compliment?" It is said by his counsel that that is Mr. Porter's mode of complimenting a man. Is not this rather too strong for you? But all this time, gentlemen, the motives of his heart, if you could only see it, are the purest that ever animated the breast of any man. Don't understand me as saying that they are not. I have already told you that it is only of his acts I can judge; and, gentlemen, I hope I will not misrepresent any act of his, but fairly present to you the thing as it stands. My learned friend, Mr. Armstrong, told you of the strong language used in Parliament in the times of Pitt and Fox. Undoubtedly when I heard my learned friend, my imagination not being so lively stopped short of St. Stephens, and resorted to the old Parliament house of Ireland, where I believe bad language was sometimes used. I will tell you the reflection that passed through my mind. Is it not a happy change that has taken place in society? What a wonderful revolution in a period of 60 years? If that paper had been written 60 years ago, it would not be in a Court of Justice that it would be made the subject of discussion. I was lately reading the correspondence of Lord Cornwallis, and I came upon a passage in which the Lord Lieutenant—the Governor of the country—referred with satisfaction to the spirited manner in which Lord Castlereagh had met impertinence. Now in these times, in the happier state of society in which we have the good fortune to live, the man who would attempt to make such a thing a personal quarrel would be scouted from society. Society expects a man when his character is slandered, and his honor impeached, to come into a Court of Law, and not to embroil his hands in blood, to make children fatherless, and the wife a widow. Gentlemen,



when you are asked not to do justice in this case, you are in effect asked to cast us back to the barbarism of old times, when the duel was the recognized mode of wiping out an affront or avenging an injury. When my learned friend alluded to the violence of language in past times, he might have got an example in the Irish Parliament. When some one in the Irish Parliament used language nothing like so strong as this, Mr. Grattan rose and said—"If any man accuses me of falsehood my answer is a blow." Gentlemen, thank God we are past all that, and past it because we are placed under the protection of gentlemen like you, who will teach gentlemen like Mr. Porter, that if he does indulge, and perseveres in indulging, in writing of this kind he cannot hope to do it with impunity, and that if he wounds the feelings, and defames the character of another, he will have to pay for it. That is of no consequence I am afraid to him, I rather wish it were of more consequence. My learned friends have told you that he is a gentleman of great wealth and of high position, and under these circumstances they have told you another matter—they say you ought to pay particular respect to him in this case, because his publication was not an anonymous one. Gentlemen, it is because it is not an anonymous publication that I call on you to take exactly the opposite course. If it had been an anonymous one, my client would have let it pass like the idle wind that he heedeth not. He might set it down to some low scribe, who entertained some pique or malice towards him which he took that mode of gratifying; but when a gentleman of his own position, a gentleman of equal rank though not ennobled, a man of equal fortune, came forward to put on record his opinion of Lord Erne's conduct, no course was left, to use his Lordship's own language but to come into a court of justice, to endeavour to put a stop to the slander.

Gentlemen, it is my opinion that no purity of heart, no sense of uprightness, no consciousness of virtue, can make a man impervious to the shaft of the libeller. I ask you this, don't you think a virtuous and good man is as subject to be pained by attacks on his conduct, his motives, and his character, if they are unjust and malicious, as the person of no reputation at all? Yet I always hear it put forward that juries

ought never to mind when a good man is libelled because it can do him no harm. Gentlemen, it inflicts pain on him which the bad man would not feel. He will suffer, but a disreputable person will not suffer, for you cannot blacken a sweep ; but it is when a man is an upright, just, and honourable man, that he does most keenly feel a libellous attack upon his character and motives. What was it that led men in olden times to the duel ?—Nothing but the impossibility of bearing the stigma that rested upon them. What now brings men before juries ? The same motive, a desire to preserve a fair and honest fame among their fellow men. Therefore it is that every one of those arguments put forward on behalf of Mr. Porter tends grievously to aggravate the case against him. Still they ring the changes on his motives. You don't know what he meant, except what he tells you himself—he meant what he wrote. The moment you go away from the words and strive to search into his motives, you embark on a sea without rudder or pilot. When I heard my learned friends speak of Mr. Porter's motives I could not help thinking of something that occurred in my school-boy days. In the town where I first went to school there lived an apothecary—a very good fellow but the most irascible man that ever lived. He was very easily excited—and therefore was a common object for the mischief-loving urchins to practise upon ; and I am afraid that I and other urchins like me were the torment of his life. In the course of his profession he often had to visit ladies and delicate people with whom he was very soothing and kind. Out in the street however you could get him up in a minute—his hand was as ready as his tongue, and both were very strong. When he blistered or bled one of his lady patients he was in the habit of saying, “ I will do it with the greatest of mildness,” and the result was that it became a cant expression with him which he would use to every one, and on every occasion. I have seen him with my own eyes knock down a man saying, “ By this and by that I will knock you down, you blackguard—with the greatest of mildness,” and down the man would go ; but I ever heard that any man's eyes was a bit the less black, or his nose the less bloody, because the apothecary accompanied the blow with a declaration that he would do it with the greatest

mildness, (laughter). That is exactly like Mr. Porter. All his imputations on Lord Erne are made with the greatest of mildness—his intentions are the best in the world—he has nothing but love, honor, and respect, for Lord Erne. Is that so? I don't know how he honors and respects men—but I will now go to the manner in which he expresses his honor and respect. I now go to consider whether this of which we complain is a libel, and whether it or any part of it bears the meaning which we attribute to it. On this part of the case I think I will confine myself far more strictly to reasoning than my learned friends have done; and I think I will show you that it is impossible to give any explanation than this, that Mr. Porter in an evil hour, with his passions excited, and deeply mortified and disappointed at finding himself standing alone, allowed himself to be carried away by the strength of his feelings into writing, what I hope he now in his better judgment cannot approve of, but which unfortunately he neither will apologise for nor retract.

To show you that it was not the intention of Lord Erne to bring forward anything that was not understood to be matter of personal imputation, I will recal your attention to a passage that was for the first time brought under your attention by Mr. Lawson. It is at page four of the pamphlet, "Again Lord Erne, our chairman, says that I am hostile to this company (in which I hold the same small number of original shares as himself, viz., 20,) because I have supported the Clones branches and opposed his Shantonagh branches. I will therefore make his error quite plain and clear, and can allow for his annoyance at finding that the complete failure of his statements is now notorious over all Ireland." Gentlemen, there is no complaint made of that paragraph. Lord Erne says—"You are perfectly at liberty to make the imputation that my mistakes are notorious over all Ireland. I don't quarrel with you for it, although it may be highly offensive." If I were to make an observation on it, there is but one thing I should notice. If I were myself the writer of it, I should be extremely ashamed of one thing. It was a pamphlet written for the purpose of being circulated—aye, and circulated by the writer gratuitously—to defend his policy in connection with this rail-

way. He intended it to go far and wide through the land. He did not intend to compliment Lord Erne to be sure, but I will tell you what I think, between man and man, was scarcely fair or characterized by that high and honorable feeling, that ought to mark the conduct of a gentleman. Would not any man reading the passage I have just quoted say, "This is the act of a person who has an equal interest with Lord Erne in the railway, and whose opinion has as much weight." Why did he refer to the 20 shares as being the number which both he and Lord Erne originally held in the concern? Is it not an index of the unfair spirit that was brewing in his mind? At that time he had £600 invested in the railway, and Lord Erne £100,000; whereas any one reading the passage, and knowing nothing about the matter, would say that they had both an equal interest in the concern. The paragraph seems as if it were written to lead to that false conclusion, and therefore it is one of those things which it would have been as well for Mr. Porter as a gentleman not to have done. I now go to the passages of the pamphlet of which we do complain. A great deal has been said of our taking garbled extracts. A more unfounded imputation was never hazarded. We have taken pages 6, 7, and 8, leaving out but one short paragraph, and the passages follow consecutively, although they are necessarily split into different paragraphs in our plaint, for the innuendoes applicable to one are not applicable to another. The small paragraph of three or four lines, which we omit, is probably the most offensive of the whole. We then take a short passage from page 10 and another from page 20, both of which are connected together; so that you will see the charge of garbling the pamphlet is without foundation. Now I will proceed to deal with them *seriatim*, and endeavour to satisfy you that they mean exactly what the words convey, and that the words convey the most grievous imputations. I should premise this to you (and I do this of course under his Lordship's correction) that if the language used by a man in a printed publication be in its nature libellous, the Jury has no business to go one step further in reference to malice. It is for the Jury to find whether the language is libellous, and if you once come to that conclusion discharge your minds of all further responsibility—the law will do the rest for you.

Now, gentlemen, I come to the first passage of the libel. "Still, men often take different views of affairs, and are liable to mistakes, let us, therefore, in charity suppose that Lord Erne and our directors had our interests at heart." That passage is undoubtedly of an offensive nature. Still, I should not direct any notice to be taken of it, although its manifest meaning was, that the directors had not the interests of the shareholders at heart, although, in charity to them, he would be so merciful as to presume it. He goes on—"But, why have improper means, improper patronage, improper political influence been used to promote views which have now failed, and with the most grievous injury to our property?" Gentlemen, is it a libel to say of one of you that you have used improper means for the attainment of any end, even of a good one? Gentlemen, you have the highest authority for not doing evil that good may follow. That maxim stands upon a foundation which we must all respect. We say, that the imputation of doing evil, the using of improper means, no matter what the end may be, is a libel; and I deliberately tell you, under his Lordship's correction, that it is one, but it is nothing like this that follows it. "Improper patronage"—what is the meaning of that? Can any one doubt that its meaning is, "You, Lord Erne, are a very great man, you are the Lord Lieutenant of this County, you have a great fortune, you have necessarily great patronage. That patronage has been improperly used—not used, but abused for the purpose of injuring your fellow shareholders, whose interests you were bound by every feeling of honor and of duty to protect." To attribute to a man in discussing his conduct, the use of improper means or improper patronage to attain his end, and especially if the end be a bad one, is grossly libellous; but neither of them is like the third—the abuse of political influence. That is pointed at the man who was a Peer of Parliament, and necessarily had political influence; and therefore the only question I have to ask you is this, do you believe that means, that improper political influence, has been used to promote ob-

jects injurious to the Company? Gentlemen, one of you early in the case stated, with the sanction of his fellow Jurors, that evidence would not help you much (and I think it would not at all) to come to a just and right conclusion on these matters, which every one, as it appears to me, who runs can read. I think this passage is too plain to admit of doubt, and I come therefore to the next—"Why has truth been disregarded in our director's statements?" Is that a libel or is it not? I suppose you have heard of the case of Mr. Dixon in Liverpool, who, with the sanction of the highest Court in the country, has been made to answer heavily for having been present at a meeting of Directors of a Liverpool bank, at which a false statement was put forward. Why, a grosser libel cannot be imagined. "Why has truth been disregarded in our director's statements?" That is or is not a libel, and that it is one, I think you will not hesitate to pronounce. Nevertheless, that Mr. Porter had a right to bring it before the public, if it were a well-founded statement, I don't deny, but I say this, that in point of law it was his bounden duty to have put a plea to that effect on the file and have proved it. It now upon this record must be taken that that statement in the pamphlet is absolutely false, totally without foundation. As to the other part of the libel, that the Chairman of the Company, that chairman being a Peer of the realm, sanctioned with his great name a falsehood to deceive the shareholders—is that fair discussion? No; I will tell you what would have been fair discussion. To take up the statement, to say that it was wrong, to go into any amount of counter statements to show that it was wrong, and to submit that his version was the true one.—That is fair discussion, and it is very unlike the course taken by Mr. Porter, who makes a bare, dogmatic, and offensive assertion, that the statements made by the directors were untrue. And now, gentlemen, I come to a passage which I will not insult your understandings by dwelling upon, but I must point your attention to one or two words of it, and then ask you what you would think of it if it were said of you? "Why did Lord Erne swear before Parliament in

1855 that our directors had then money enough to finish the line to Enniskillen, and £60,000 over and above towards branches? I cannot imagine why Lord Erne hit on this moderate sum of £60,000. When he once left the terra firma of plain truth, he might just as well have said £100,000 or £200,000." I suppose every one knows that, in proceedings before Committees of the Houses of Lords and Commons, short-hand writers are employed to take down every word that is said; so that, if there were one tittle of truth in this statement, Mr. Porter could have had no difficulty in proving it, because the evidence of Lord Erne is on record. He might have said, "Well, I did write that, but I did so because I had read that Lord Erne did so swear." Gentlemen, he knew he dare not take that issue, and he has shrunk from it. He admits on the record the falsehood of it; and that being so, is not its meaning plainly this, that he charged Lord Erne with having sworn falsely before a Parliamentary Committee. The word perjury has been introduced into the innuendo, but it makes not the slightest difference; for all I can say is, if any body said of me, that I had, before a Committee of the Lords or Commons, made a false statement of that kind, it would not increase or diminish my pain or anguish, whether it was alleged that I had sworn it, or merely stated it. I don't understand the imputation of perjury upon a gentleman to be one bit more offensive than to attribute falsehood to him. I don't understand these nice distinctions. I reject the notion, and cast behind me the principle, that perjury is a criminal offence to be punished; and that in old times and by the old law, the charge that a man committed a criminal offence must be a libel. Gentlemen, there are criminal offences that I would rather be charged with, and sentenced to penal servitude for, than many that are not criminal at all. Amongst gentlemen no virtue is regarded higher than truth, and there is none the violation of which brings more disgrace and ignominy on a man. The sting of the libel therefore is the same, whether it imputes to Lord Erne perjury or simple falsehood. Lord Erne challenged Mr. Porter to come forward in this Court and prove

the truth of this gross libel ; but he has admitted its falsehood on the record, for he knew he dare not meet us on that issue.

Mr. PORTER—(in an under tone) He did say so.

Mr. BREWSTER—I hear him muttering something, and he had better not. When Lord Erne was in the witness-box he could not be asked what he had sworn before Parliament, because the falsehood of the libel is admitted on the record, and we were therefore precluded from going into evidence on the subject. The gloss put upon the libel by my learned friends, was, that in his heart and conscience, it was not Mr. Porter's intention to impute falsehood at all to the Plaintiff. That was not his motive—was it not ? “ I cannot imagine why Lord Erne *hit* upon this moderate sum of £60,000.” Why did he *hit* upon that ? He might as well have *hit* on any other sum ; it was no difference to him, because he was not going to tell the truth ! Why, gentlemen, it would be impossible to find a word more applicable than that very word *hit*, for describing a man who never thought about the truth, but who was ready to take whatever sum he thought best calculated to carry out his object. But he goes on—“ When he left the terra firma of plain truth, he might just as well have said £100,000, or £200,000.” Gentlemen, he could not have left the terra firma of truth if any of these glosses put on the libel by his counsel were true. What he attributes to Lord Erne is this—“ You were utterly indifferent as to the truth or falsehood of your statements ; and you had only to *hit* upon such a sum as you thought would serve your purposes at the time.” This is the fair, natural, unstrained meaning of the language, and, I need scarcely ask, can you imagine a more offensive or injurious imputation ? And that is circulated by this gentleman who had no motive but to promote the prosperity of the railway, and who, when the first edition is out, issues a second, in order to keep alive the calumnies which he had so recklessly penned against the directors of the company. However, I don't wish to do injustice to the able argument of my learned friend Mr. Armstrong. In this part of the libel he had some



thing to grapple with, and how did he do it? He told you that there was the greatest possible difference between logical and ethical truth. For my part, gentlemen, I thought my learned friend was rather in a difficulty here, and was sparring for wind (laughter,) when he put that forward. A difference between logical and ethical truth! Good God! do you suppose this was written for logicians, for people that sit down and make syllogisms? No, gentlemen, it was sent to all the reading-rooms in the country—it was circulated amongst the shareholders—the object was that it should bear its plain import on its face—not that the readers should get Murray's or Whately's logic to enable them to understand it, but that every man who read it would make up his mind that Lord Erne was a great liar; and then my learned friend tells you—and he did it with such grace—that Mr. Porter's language had no such meaning, and that any other construction than that he meant to impute, a logical falsehood, would be a harsh and cruel construction to put upon it. Gentlemen, if you think so, if you think that language is to be construed in this way, that because a very able and eminent gentleman at the bar can come forward and ask a Jury to believe that this was a logical disquisition on words, in God's name let Mr. Porter go free from this court relieved from the imputation of being a libeller; but if, on the other hand, you act as Juries generally do, just as you would act in your own homes, and ask yourselves what you would say if any one went in and told you, "Sir, you were examined the other day before a committee of the House of Commons—you falsely stated so and so—I wonder why you hit on that sum—when you left the firm basis of truth why did you not take some higher amount?" and then ask yourselves is that a libel or is it logic; and I have no doubt as to the answer you will give. It is logic, gentlemen, but most infamously bad logic. I would not desire better men to draw a conclusion from it than you, but I venture to say the conclusion you will draw will be in the tangible shape of pounds sterling, and never fear you will correct Mr. Porter's logic, and greatly mend his education; for he will remember your

lesson far better than he recollects the raps over his knuckles at school—he will mind his P's and Q's, and will not indulge himself in such lucubrations as this in future, and will thereby save himself the heavy expense of publication, which his combative propensities and his love of authorship may entail upon him.

But my friend Mr. Lawson went further on this subject. My friend Mr. Armstrong dealt with it as a logician, Mr. Lawson dealt with it as a moralist. It was a salutary and friendly caution given by Mr. Porter to Lord Erne not to allow himself to be misled by the representations of others. A salutary and a friendly caution! I wonder how my friend could keep his countenance. It only shows us what the power of habit is, that any one should be able gravely to propound this proposition, that to say of Lord Erne that he was one of the greatest liars ever appeared on the earth, was merely a wise, a friendly, and a salutary caution that he should not allow himself to be misled in future. I do not wonder that my learned friends were so anxious that what they said should never be observed on; because they must have had the consciousness that, able and powerful, and skilful as they are, they could say nothing that would not make bad worse; and if they had the power of exercising their own judgments I am sure they would rather have said nothing than offer explanations which could not satisfy reasonable men who knew nothing of logical or ethical truth, and who would say, that to charge a man with falsehood, and try to get rid of it in this way, is simply ridiculous. I believe I have done my friend Mr. Lawson a wrong. It was not on that passage he made that explanation, but upon the next, to which I will now call your attention. It is the most complicated in the libel, and I think it even more offensive and objectionable than those which I have been dwelling upon. I now refer to the passage commencing—"Observe what a serious view the law takes of statements of this kind. That disagreeable act for the punishment of fraudulent Trustees, &c." I won't go through this item by item; that is not the way to get at its meaning and spirit. Read the whole

of the passage, and having done so, the first question I submit is—for what purpose did Mr. Porter refer to this Act of Parliament at all immediately after he charged Lord Erne with falsehood? How did it advance his argument? assuming that he had nothing in view but the legitimate object he is said to have in contemplation, namely, a discussion of the affairs of the Company in which he is interested—surely the Act of Parliament had nothing to do with the matter? The argument was, whether the railway was skilfully managed or not; but the reference to the Act of Parliament was in respect to the charge of direct falsehood perviously made against Lord Erne, and was meant to tell Lord Erne that because he had only *spoken* falsehood he could not be made criminally responsible, but that if he had *written* it he might have been sent to jail as a criminal. Can any one who knows the English language doubt that this was the meaning of it? He is an accomplished and a practised writer, and he knows how to convey an insinuation. He does not say in plain terms that Lord Erne ought to be placed at the bar of justice; but he conveys as clearly as language can, that but for the misfortune that Lord Erne had not written what he said, he would be brought under the provisions of the Act of Parliament made for the protection of shareholders, and for the punishment of fraudulent Trustees who tell false tales about the concerns which are entrusted to their care. This is the passage which Mr. Lawson tells you is only friendly and salutary advice. You will remember also that he says, “besides the moral offence,” Directors are “liable to legal punishment for any false statement made by them in their management”—showing as clearly as light what he intended to convey by that paragraph. Then we come to the next passage complained of, in which he says, that Lord Erne, in these and in many similar statements, is only the dupe in matters he does not understand. My learned friends say, that because that is no libel you must come to the conclusion, that Lord Erne was never meant to be charged with anything but with merely being misled, and not having investigated the subjects

before he made statements to the public ; but Mr. Porter goes on to say, "but I am astonished that in justice to himself as well as to our interests, he does not, either enquire carefully into their truth beforehand, or else give the authority upon which he makes them, for they come with great weight on public meetings from a man who is often Chairman of Church Education and religious societies, that no doubt have no special license to dispense with truth in railway matters of hundreds of thousands of pounds, which is so vigorously and so justly preached in small matters of a few shillings at Church, at Petty Sessions, and between poor struggling men, tempted by hunger, pressed by distress."

Take the whole of that paragraph together ; and I ask can there be conceived a clearer proof that he was not dealing or even pretending to deal with Lord Erne merely as a railway director—that he was not discussing his conduct as such ? What had Lord Erne's presiding at educational or religious meetings to do with his being a railway director ?—what had his sitting in petty sessions to do with his being a railway director ?—What had the lessons so vigorously preached of honesty in small matters to do with his being at the head of a Railway Company ? Nothing on earth, but everything to do with the grievous imputation which from the beginning to the end was intended to be cast upon him,—that you, hypocritical man that you are, go about discussing the highest principles of justice and morality, and are ready to punish with the strictest severity those wretched creatures who, under the pressure of distress and starving with hunger, commit small offences, whilst you assume a license to dispense with truth and honesty in railway matters. Can you imagine a fouler charge than that to be made against any man ? It means plainly this—"you who are perpetually preaching to all mankind their duty relative to truth and honesty, you who hold yourself out to the world as a whited sepulchre, you who want to palm upon all men a reputation for superior sanctity and honor, are a deceptor and an impostor,—when you come to deal with railway matters you dispense with truth, your con-

science is blunted and seared, and you are utterly indifferent to what you say." And this, gentlemen, you are told is all about the railway direction. No, it is a pretext under colour of a railway discussion to defame an honourable man ; it is a covert libel, worse by far than a manly open slander, because more difficult to be grappled with. I will not attribute to Mr. Porter that when he wrote it he was fully alive to the real nature of the charges he was laying before the public ; but this I will say, that in order to mark your sense of his conduct, you ought not to abate a single farthing of the sum at which the damages have been laid. I now come to the next passage complained of, and with reference to this long paragraph I may tell you, that I have no doubt one word of it would never have been put in the plaint, but for the last two lines, and to these I must call your attention ; because I hope you will think that bad as all I have gone through undoubtedly is, we are only now coming to the climax. The preceding part of the paragraph in page 8 is very good moralizing on what the directors ought to do, and this is done for the purpose of giving force and venom to the sting that is in the tail, which is, that in place of acting as a conscientious director should act, Lord Erne "assisted the solicitors in every way in quashing and overwhelming the shareholders' wishes." The paragraph in page 20, with which this ought to be read in connexion, is as follows :—"It seems to me to be a common trick of directors and a common error of shareholders, to make the solicitor the scape-goat for all the Company's misdeeds. But if directors are independent, if one man does not want an *extravagant station in his village*, and another well paid places for needy relatives, and therefore bend to the solicitor's influence at the board, he can do no harm, and the directors, who can dismiss him when they think fit, are therefore responsible for him while they keep him." And now go back to page 10. "Is it not therefore a sad, perhaps an irreparable loss to this county, that besides these long delays which once over might be forgotten, its main railway will not be though last the best in Ireland, with the advantage of the experience acquired on earlier

lines, but so closely run are the company's means by their directors' law-suits, disfigured by every exploded penny-wise-pound-foolish make-shift; though certainly our edifices at Lord Erne's village of Lisnaskea do not show any want of money." Read these three paragraphs together and what do they mean? Lord Erne wanted to build at Lisnaskea, at the expense of the Company and for his own private ends and advantage, a magnificent station. If he did not want that magnificent station, it would not be necessary for him to bend to the solicitors of the Company, but in order to accomplish that object it was; and in doing so he assisted the solicitors in every way in quashing and overwhelming the shareholders' wishes. I ask this now broadly, having put into juxta position the three paragraphs that relate to this transaction—was there a fouler imputation ever cast upon mortal man of personal pecuniary corruption? I need scarcely say there is not a word of truth in it; if there were Mr. Porter could have pleaded it, but he did not dare to take that issue, for the insinuation is absolutely and totally untrue. It is not true that more money was spent on the Lisnaskea station than on others, and Mr. Porter knows that it is not true. Recollect that this gentleman is a shareholder of the Company, and had the power of going to the books. For his own character's sake, bearing in mind the position in which he stood, he ought to have examined the books and seen that he was making an accurate statement; but the fact of his not having pleaded a justification is decisive of his own sense of what he had done, and a confession that the allegation is unfounded. He first of all says that Lord Erne wished to benefit his own property by an extravagant expenditure of the Company's money on a particular station. Is that discussion of a railway director's conduct? That is a charge of personal corruption of the most base and unworthy kind, and when applied to a man in the position of Lord Erne, with such a fortune as he possesses, is about one of the most abominable charges that ever was preferred. It is weak, however, compared with the other branch of the accusation, that not only did he do an unworthy thing, but in order to accomplish that purpose he

bent to the solicitors' influence and assisted them to overwhelm the wishes of the shareholders of the Company. Is that a discussion of the management of a railway, or is it the imputation of the vilest motives? Though a man has a right to discuss railway matters freely, he has no right to impute unworthy motives to his adversaries. I don't impute any motives to Mr. Porter—I cannot read his heart—but he has no difficulty whatever in imputing motives of the basest kind to the most honorable men. And this, Mr. Armstrong tells you, is a wretched attempt to extract a libel from an innocent paragraph! He says it is absurd to suppose that Lord Erne would in fact act in conjunction with the solicitor for such a purpose. It is new to me that the absurdity of a charge is not an additional proof of its malignity. I admit that it is an absurd charge, but because it is absurd, the imputation is the more unjustifiable, and the punishment should be the more exemplary.

Let me remind you how this charge comes to be made. It is a common trick, says Mr. Porter, to make the solicitor the scapegoat for the misdeeds of the Company; but I will not allow that, for I will show that your chairman is a corrupt man who bends to the solicitor for the purpose of effecting his own selfish objects at our expense. I repeat, gentlemen, that I don't want to impute motives, and I would not say a word of what I am now going to refer to only that it was brought forward by Mr. Porter's own counsel. It appears that his father has a town not far from Lisnaskea, called Lisbellaw, and that the directors when they went to Parliament took powers to make a station there, but afterwards when they came to consider the line did not think proper to make one. He and his father had probably great cause to find fault with that determination—it was injurious to Mr. Porter's property although it was for the advantage of the Company—and accordingly the father of the defendant filed a cause petition in chancery to compel them to erect a station at Lisbellaw. I give the defendant honor for the filial affection that he showed in the matter; he took up his father's quarrel, and having his pen in his hand he made the gross attack on Lord Erne which I have been en-

deavouring to place in its true light before you. And now, gentlemen, I commit the case to your hands. It is the most singular case that ever I heard of in my life. It has been broadly put forward to you in behalf of the defendant that this is nothing but a natural, rational and proper discussion of the question, whether or not branch lines or main lines ought to be made first. With a view to the argument so strongly pressed upon you as to this point, I asked Lord Erne to prove the prospectus of the railway, and you will be astonished to hear that the original plan to which I find Mr. Porter's name subscribed was for a Dundalk and Enniskillen Railway Company with power to make branches to Cavan and to Monaghan. That may be so, and yet in his judgment it might be better that the whole of the main line should be first made. What has happened? Not one yard of branch lines has been made, but the line which the directors wanted to make, the main line to Enniskillen, has been completed, is open this day, and will be opened publicly and in all due form for traffic to-morrow. What is the basis of their defence? That the directors were incompetent because they were intent on making branch lines and would not make the main line. It turns out that they never made a yard of a branch line, but that the main line has now been successfully completed. Oh, but they spent £20,000 in Parliamentary contests. Yes, and he who put this expense on the Company by his own opposition has the modesty to turn round on Lord Erne and charge him with having wasted the money of the Company. That is his justification. Out of his own wrong, out of the manner in which he caused the money of the Company to be wasted by his own perverse and senseless opposition, he writes a foul libel on Lord Erne and the directors; and then turns round on them and says, "oh, I did not write it anonymously, and therefore you must think I am a good sort of fellow. Lord Erne is so excellent a man, so venerated and respected by every one who knows him, that nothing I can say can do him any harm—that you are to shut him out because he is a good, honorable and upright man, and come to the conclusion that although I did say of him the foulest things that could be written of a



mortal, I did it from the purest motives of public benefit. Find therefore a verdict for me—let me go home in triumph to the County Fermanagh in order to tell the people that its Lieutenant, the man that they supposed was a man to be trusted, to be honored, to be respected and to be loved, is a man respecting whom every one in the community may put his name to the most atrocious libels that can be penned, and a Dublin Jury will say to him, ‘Sir, you have done well—you shall go down to your county an honored man, and your victim be turned out of this Court defeated, and without redress.’ Gentlemen, I suppose from the intimation which your foreman gave with the concurrence of you all, that we have been wasting our time in endeavouring to show you the meaning of the language which this gentleman has thought fit to publish to the world; and that you will have no difficulty in coming to the conclusion that it is a malignant libel, and that the man who published it deserves to pay the penalty. I leave the case, gentlemen, confidently in your hands, and I trust you will prove to the public by your verdict that it is not safe to deal with public or private character in the way that Mr. Porter thinks himself licensed and warranted to do. [At the conclusion of the learned Counsel’s address there were manifestations of applause in Court.]

The CHIEF JUSTICE then proceeded to charge the Jury as follows—Gentlemen of the Jury, in this case which has occupied so much time, I feel it my duty rather to abbreviate than to expand, and to endeavour to bring it before you into the narrowest compass that I safely can. The action is for a libel on the Plaintiff, who complains that it is a libel on him personally, as well as in his character of a director of the railway company. The defendant says that it is not a libel; that the words which have been selected in order to found a charge of libel upon them, are not in themselves libellous, and that they were not, at all events, used in what may be called a libellous sense, that is in a defamatory sense; for a libel is nothing more or less than a written defamation, tending to bring the character of the party libelled into odium, disrepute, and disrespect. As I have said, it is a charge for defamation upon the Plaintiff

personally, as well as in his character of a railway director. Now, gentlemen, I have no difficulty in telling you in point of law, that if a charge made against the Plaintiff as director, be of such a nature, as would be a defamation of him in his private character—if acts are imputed to have been done by him in his character of director, the imputation of which would be a defamation of him as an individual, it does not divest the language of the character of being defamatory, or of the consequences that follow. It is very true (and this is the defence in the present case,) that if what he said and published were merely a statement to the public and to the shareholders, of the errors and mistakes of the Plaintiff as a director, however severely he may have commented upon, and exposed those errors and mistakes, in my opinion he would have a legal right to do so; and if he confined himself (and if you, on reading this pamphlet, find that he did so confine himself) to an examination, to a severe criticism, to an exposure of errors and mistakes on the part of the Plaintiff—then, gentlemen, in my opinion, and if that is all you can find in the pamphlet, you will find a verdict for the Defendant. Certain portions of the pamphlet have been selected, and have been put on the record, as matters which it is insisted on the part of the Plaintiff, are not confined to the statement of errors or mistakes, but are the imputation of certain actions or motives, which would equally disgrace the Plaintiff, and be defamatory of him as an individual or as a director. If you can find that there is matter of that nature in the imputed libel, applying to the Plaintiff in either capacity, then, and in that case, if these matters be libellous within the definition I have given you, the Defendant in publishing them, would not come within the protection which a shareholder has in exercising his right to bring the errors and mistakes of the management before his brother shareholders. It is quite settled law that parties have a right to discuss freely the conduct, I will say, not only of politicians and public men, but of any men taking upon themselves to discharge the duty of trustees for others—such as directors of a railway—and to criticize and animadvert freely on their mistakes and

errors. If, indeed, they go further, and give cause for an imputation against them of acting corruptly, they are liable to that also ; but here the imputation of corruption is altogether disclaimed, and it is insisted on behalf of the Defendant, that he never meant to impute corrupt actions or motives, but that all he meant was to impute error to the Plaintiff. It is for you to say, gentlemen, whether what the Defendant says was his real purpose was adhered to by him ; but I have to tell you, that it is not the intent of the writer that is to determine whether what he has written is libellous or not—it is not the purpose or intention in his own mind, but it is the writing itself, by which you are to judge whether the matter complained of is, or is not, libellous. A malicious intent would be a grievous aggravation of a libel ; but it is not because a man may disclaim a malicious intent, that you are to decide that his writing is not libellous ; it is by the effect of the writing, and not by the mind or intent of the writer, that you are to form your judgment. Gentlemen, in the course of the case, a question has been raised with respect to the manner in which the Jury were to deal with the language of the libel, namely, whether they were to judge of the language by the meaning that others might ascribe to it. I expressed a very strong opinion that that was not the way in point of law, that the language of the libel was to be dealt with, and that it was not a proper course to produce witnesses on either side, to prove what they understood to be the meaning of the words.

With great good sense, gentlemen, you observed that you were as competent yourselves to judge of the meaning of the language as the witnesses ; and I find on looking into the matter that my recollection of the law was perfectly accurate. In a case of the very highest authority, where the decision was made by Lord Mansfield, a writ of error was brought in the House of Lords ; and Chief Justice De Grey gave the opinion of himself, the Chief Baron, and all the other Judges of England—their unanimous opinion—that the Court and the Jury must understand the words as the rest of mankind understood them ; for that if it were

otherwise, a person might libel in one sense and defend himself in another. He, by bringing witnesses to swear that they did not understand the libel in the sense imputed to it, might make a defence for himself, having issued the libel to the public, and they having received it in the sense in which every body would receive it. Indeed, there is another observation which might be made, as to the absurdity of what would be the consequences, if the matter were to be disposed of by the Jury on evidence. In libel cases there is sometimes a proceeding taken, called an arrest of judgment, after the case has been disposed of by the Judge and Jury, for the purpose of showing that the words did not justify the imputation or innuendo affixed to them. Now, if the matter were to be disposed of by the evidence of witnesses, there could be no such thing as arresting judgment; for the Jury would have disposed of the case on evidence, and it is no matter of arrest of judgment to quarrel with the decision of the Jury. Therefore, gentlemen, I have thought it right, not only in vindication of the ruling I have made, to refer thus briefly to the law on the subject; but I take this opportunity of protesting against what I understand has been occasionally the practice in Ireland, though I cannot find the least warrant for it in any case that has occurred in England. The case to which I have referred is a direct authority that the Jury are to judge of the meaning of the language for themselves. It is very true, gentlemen, if a party is libelled under a feigned name, or as formerly used to be done by initials or by leaving blanks—if, in fact, there be any ambiguity, then it may be explained by testimony. But here, where the publication complained of, professes expressly to apply to Lord Erne, and is in our own language, to produce witnesses to show that it applied to Lord Erne, and to say what meaning it conveyed, is absurd; and if we had nothing else to satisfy us of that, the answer of the witness who was put on the table (the defendant himself) would be sufficient to do so; for he said, "The words speak for themselves," and so they always must. Having in this general manner given you such instruction as I deem it right to give you, it only

remains to call your attention to the actual case that has been made on the one side and on the other, and, as far as is necessary, to the details that have been gone into. The pamphlet professes only to be an exposure of errors and mistakes; but there have been selected passages which it will be for you to say whether they merely impute error or mistake, or something worse. One of the most important, as it strikes me, for your consideration is that one in which it is stated that the Plaintiff had departed from the ground of truth in what he had stated in his evidence before a Parliamentary Committee respecting the circumstances of the Company. Now, whether that is stated of him as an individual or a director, does not appear to me to make the slightest difference; for can any man, who undertakes a trust, in which it was his bounden duty to regard the interests of all, be sanctioned in departing from the grounds of truth any more than any individual can?

Extensively as the public are now concerned in these railways I would be sorry that it could for an instant be supposed that a director is exempted from the obligations of morality and honor, and in any way privileged to depart from truth and honesty. The Defendant says, however, that this was merely an imputation of the Plaintiff having fallen into error from not having taken pains to enquire into the accuracy of the statements which he made upon the authority of others. Upon the fact that Lord Erne swore at all before a Parliamentary Committee there is no evidence whatever, and on the contrary the Defendant has not justified his charge that Lord Erne departed from the ground of truth. If he wanted to shew that Lord Erne swore falsely, he was at liberty to prove the fact if he were able to do so; but he has not alleged on this record that Lord Erne swore falsely, and thus has not given him an opportunity of disproving it. That measure of justice has been taken away from the Plaintiff; and he must now lie under the imputation of having sworn falsely if you should find upon reading the whole of the paragraph that it only meant to impute that he from want of due enquiry committed an error in the evidence which he gave. The next pas-

sage which appears to me to be the most serious is that in which it is alleged to be imputed to him that he was a fraudulent Trustee, and that is done through the medium of reference to an Act of Parliament which was passed to make fraudulent trustees indictable for misdemeanor. Accordingly this Act is set forth in all its principal parts. The Defendant alleges that it was only intended as a caution to railway directors generally; but on the part of the Plaintiff it is said that it winds up by insinuating that Lord Erne had a happy escape from punishment, and that he did not come within the letter of the Act, though he violated its spirit, because the false statement was not committed to writing, but simply spoken. It is said that this did not amount to asserting that Lord Erne had committed a misdemeanor. It will be for you to say whether the public on reading that insinuation or imputation, would come to the conclusion that it meant what the Plaintiff insists it did mean. It is for you to say, whether if you were now forming your judgment merely for the first time by taking up this pamphlet and reading it, you would consider it was intimated thereby that Lord Erne—if he had not been so fortunate as to have made his statement in words only, instead of writing—would have been a fraudulent Trustee, and liable to punishment under the Act of Parliament. There is another matter, gentlemen, which I think it important to call your especial attention to. It is that passage containing an alleged imputation of private and selfish motives on the part of Lord Erne in the discharge of his public duty as Chairman of the Railway Company. Such an imputation as that is undoubtedly of a libellous character. It is going out of and beyond the limit which the law allows in the examination and criticism of the conduct of a man having any public duty to discharge. It is charged in this record, and it will be for you to say whether the language in the publication sustains this imputation or not, that the Defendant accused Lord Erne of being induced to take the part he did at the Board in conjunction with the solicitor—and which ended in the deterioration of the property of the shareholders as alleged—with a view of obtaining for himself a magnificent station at his town of Lisnaskea.

Gentlemen, you will read these paragraphs, and it will be for you to say whether they bring home to your minds distinctly and satisfactorily that imputation. If they do not, then, gentlemen, they will not be libellous ; but if on the other hand, you by merely reading these paragraphs come to the conclusion that they convey a charge or insinuation against Lord Erne such as I have stated, unquestionably, gentlemen, these passages also would be libellous. But as I have already said, you are the exclusive judges in the matter. There is another imputation made rather by way of insinuation, and it is for you to say whether it was intended by the defendant. If it were it would be a most odious imputation, and that is the imputation of hypocrisy. It is the passage in which he asks is truth to be dispensed with at Railway boards, and whether a director was to be at liberty to do that which would not be tolerated in the chair at religious meetings or on other public occasions. If you are of opinion that that insinuation is intended for the purpose of imputing hypocritical conduct and motives to the Plaintiff, then, gentlemen, that would also be libellous ; but it will be for you to consider whether you are satisfied that that is the proper interpretation to put upon it. I have now gone through all the different charges on which you have to find, either that the matter of these charges was libellous or was not libellous, having regard to the definition I have given you, that is, whether the charges were such as were calculated to hurt the feelings of the Plaintiff or expose him to contempt and ridicule. Then you will have to consider whether these several charges were used in a defamatory sense, or only used with a view to impute to the Plaintiff error or mistake. If you should come to the conclusion that they were used in the defamatory sense alleged, and not merely for the purpose of imputing error or mistake, you will find a verdict for the Plaintiff. If you should take the other view of the question you will find for the defendant. The only matter that remains for me to touch upon is the question of damages. If as I have said, the question of libel or no libel is for you exclusively, how much more is the question of damages solely within your province. You are all in that rank and condition of life which renders you compe-

tent to form a judgment on the matter, and to arrive at a just estimate of the damages that you ought to give the Plaintiff in such a case, if you should agree to find for him. The damages are for you to award, and I am sure that you will exercise the same sound dispassionate judgment upon that part of the case, as I trust you will exercise on the other part of it. Take the pamphlet, gentlemen—I would say to you as I have heard in my early life from some of the most eminent judges in England—take it to your box and form your own opinion upon it, whether the language of these passages that have been selected, taking the whole of them together, is such as to lead you to the conclusion that they were written with a view to impute mistake only; or whether they were not written, and were not calculated to impute that which would be libellous—that is, not a mistake or error of judgment, but a want of truth, the existence of selfish or improper motives, and a general accusation of dishonesty and corruption.

The Jury then retired, and after deliberating about fifteen minutes, returned into Court with a verdict for the Plaintiff for £300 damages.



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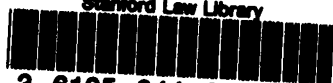
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